INDIANA FARM LAWS

WITH

BUSINESS FORMS

AND

LETTERS

PRESENTED TO THE FARMERS OF HUNTINGTON COUNTY WITH THE BEST WISHES OF THE

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INDIANA FARM LAWS

WITH

BUSINESS FORMS

AND

MODEL BUSINESS LETTERS

BY

WILLIAM K. WILLIAMS

ATTORNEY-AT-LAW

COLUMBUS, OHIO

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COLUMBUS, OHIO

1910

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PREFACE.

When a man is brought before a court of justice for some offense he may have committed and offers his want of knowledge of the law in excuse for his conduct, he is told that "Ignorance of the law *is* no excuse," and he is made suffer the penalty. As courts only require of each citizen the full and fair performance of his duty, and nothing beyond, we must therefore conclude that the reason the plea of ignorance is not accepted, is because it falls within the duty of every man to know the law. But this does not mean that a man shall know all the law; none but those who make its study and practice a profession are expected to have a special knowledge of its many branches or departments. The average citizen has probably performed his full duty when he has made himself familiar with those laws of his state relating to his own occupation, his property rights, and those which govern his conduct and course of action as a member of society.

To afford to the farmers of Indiana, and others interested in that occupation, an opportunity to gain a knowledge of the laws of the state relating to farms, farming and kindred matters, has been the object in the preparation of this volume. A careful study of its pages will advance the reader well toward that point where he may feel that he has fairly discharged the duty of informing himself in those matters which are of daily concern to all persons residing in farming communities, or who are in any way interested in agricultural pursuits. The chapters on business forms and model business letters were added for instruction in practical business matters and correspondence.

We have numbered the paragraphs or sections, the same extending from 1 to 602, and we have indexed by referring both to these sectional numbers and to the pages. We have also retained, as far as possible, the number of the sections as given them in the original act. These numbers do not run consecutively, as many of the original acts have been divided for classification. Also two or more acts regarding the same subject have in some cases been placed together, which disturbed the original numbering. Besides, it has not been necessary in every case for us to use all of each act. We have selected only those parts which concern the farmer and this has caused the original sectional numbering to appear irregular. The numbers enclosed in brackets at the end of any paragraph or section indicates that such paragraph is in the same language,

or, is in substance, the same as the section of like number in the last edition of Burns' Statutes of Indiana.

The other references indicate decisions of courts, usually the highest court of the state in which the case was decided. The effort has been throughout to give the law accurately as it is found in force and operation in the state to-day.

It is not to be inferred by any one into whose hands this book may fall that he shall thereby become his own *lawyer*. No man not intending to make the practice of law a profession should study it with any view other than to educate himself and thus broaden his qualifications for the discharge of his duties as a citizen.

Columbus, Ohio, January 1, 1910. AUTHOR.

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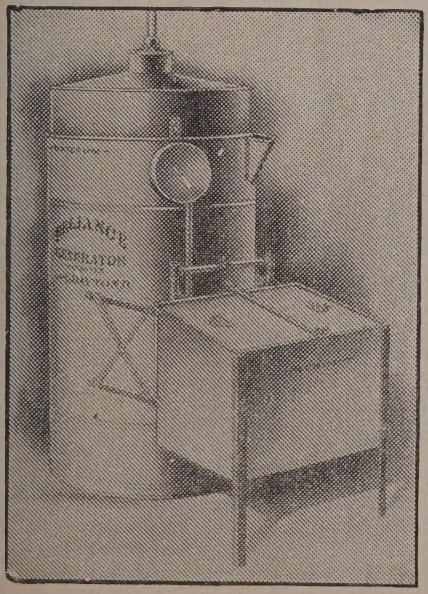

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CHAPTER 1.

Animals.

I. Running at large.
II. Dogs; sheep claims and damages
III. Cruelty to animals.
IV. Diseases of animals.
V. Keeping sire for service; license; lien on "get."
VI. Commercial feeding stuff for animals.
VII. Liability of railroad for killing stock.
VIII. Miscellaneous.

I. Running at Large.

1. **Duty of board of county commissioners to make order designating what animals may run at large on uninclosed lands:** SEC. 1. It shall be the duty of the board of commissioners of the different counties of this state to direct, by an order entered on the order-book of said board of commissioners, what kind of animals shall be allowed to pasture or run at large on the uninclosed lands or public commons within the bounds of any township in their respective counties: *Provided,* That they may also make an order, duly entered on the order-book of said board, allowing stock to run at large upon the public commons and uninclosed lands of certain portions of townships within their counties, when the said township is divided by a river or a railroad, providing that stock may run at large on one side of said river or railroad, and not on the other, in the same township.

2. **What the order shall specify:** SEC. 2. The board of commissioners of the different counties of this state shall specify, in said order, by name, the kind of animals that shall run at large or pasture upon the uninclosed lands or public commons within the different townships in the county, and also what particular class of the said kinds of animals, whether male or female, and of what age, shall be allowed to so run at large.

3. **When animals running at large may be taken up:** SEC. 3. Whenever any animal shall be found running at large or pasturing upon any of the uninclosed lands or public commons of any township in any county in this state which shall not be specified in the order of the board of commissioners of said county, as in the preceding sections

provided, to have the right to so run at large or pasture thereon, any person being a resident of said township shall be authorized to take up and impound said animal in any private or public pound within said township.

4. **Notice to be given owner of animal taken up, etc:** SEC. 4. The person taking up and impounding any such animal shall immediately give notice in writing to the owner of such animal, if known to him; if not, he shall give notice by posting up, in three of the most public places in the township, a notice in writing, stating therein the time of the taking up, the age and marks, and a full description of the animal taken up, and that the owner thereof is unknown to him, and the place where said animal is impounded.

5. **Animal to be fed; when to be advertised for sale:** SEC. 5. It shall be the duty of such taker-up of any animal to carefully attend to and provide the animal taken up with food. And if, at the expiration of ten days from the day of posting up of the notices as in the preceding section provided, no person shall appear and claim and prove the animal so taken up to be his property, the taker-up shall immediately advertise the animal for sale, at public auction, by posting up, in three of the most public places in the township, written notices, stating therein the time and place of sale, the description of the animal to be sold, that the same was taken up as an animal not entitled by law to pasture upon the public commons; which notice shall be posted up at least ten days previous to the day of sale.

6. **When animal to be returned to owner; expenses, etc.:** SEC. 6. If, at any time before the expiration of ten days from the time of posting up the notices as in section four of this act provided, any person shall appear and claim the animal taken up as his property, and prove, by his own affidavit or the affidavit of another person, that the animal taken up belongs to him, and shall pay to the person taking up said animal the sum of three dollars for his trouble and expense of keeping, he shall be entitled to the custody of the animal so taken up; and it shall be the duty of the taker-up to immediately deliver the animal taken up to said owner: *Provided*, That in all cases where the owner shall be notified by the taker-up in writing, if he shall immediately proceed to take into his own custody the animal taken up, he shall be liable to pay to the taker-up the sum of one dollar and fifty cents only.

7. **When animal to be sold; manner of sale; costs, etc.; disposal of proceeds:** SEC. 7. In all cases where any animal shall be taken up and impounded under the provisions of this act, if the owner shall not appear and claim and prove the animal so taken up to be his property, as in the preceding section provided, previous to the day of sale specified in the notices of sale, as in this act provided, it shall be the duty of the taker-up to proceed and sell, at public auction, the animal taken up for the highest price bid for the same; and out of the sum bid

for and received for the animal so sold, he shall be entitled to retain the sum of three dollars for his services rendered in the taking up of said animal; and the further sum of ten cents per day for each day he shall have kept and fed the said animal, and the balance of the money received for said animal shall be paid over to the county treasurer, by the taker-up, for the use of common schools, and shall belong to and become a part of the state common school fund, and shall be paid over to the treasurer of state by the treasurer receiving the same for that purpose: *Provided,* That it shall be the duty of the treasurer to retain the money in his office one year; and if any person shall appear, and prove to the satisfaction of the treasurer and auditor that the animal sold by the person paying the money into the treasury was his property, the treasurer shall, on the warrant of the county auditor, pay the amount received to him, less his fees.

[In force since March 7, 1887.]

8. **Duty of road supervisors to take up animals running at large upon roads, etc.:** SEC. 1. It is hereby made the duty of all road supervisors, upon view, or information, to cause all horses, mules, cattle, sheep, goats or swine found running at large upon the roads, commons or uninclosed lands, within their respective districts, which are not authorized to run at large by order of the board of county commissioners, as by law provided, to be impounded, and such other proceedings had as required by the provisions of chapter 11 of the Revised Statutes of 1881, being an act concerning animals running at large. If any such road supervisor shall fail to perform such duty, he shall be fined not less than one nor more than five dollars for each and every offense, and the trustee of the township is hereby authorized and required to retain any unpaid fines or costs from any sum that may be due and unpaid to such supervisor for services rendered in his official capacity.

II. Dogs; Sheep Claims and Damages.

9. **Owner or harborer of sheep-killing dog liable for all damages incurred by such dog:** SEC. 1. If any dog shall kill or injure any sheep, the owner or harborer of such dog shall be liable for all damages that may be sustained thereby to be recovered by the party injured before any court of competent jurisdiction.

10. **When lawful to kill dogs:** SEC. 2. It shall be lawful for any person, at any time, to kill any dog which may be found running, worrying, or injuring sheep.

[In force since April 14, 1897.]

11. **Assessment of taxes on dogs; payment:** SEC. 1. That the township assessor shall be required at the time of assessing the property of each property-holder of his township as now required by law, to

make diligent inquiry as to the number of dogs owned, harbored or kept by the person so assessed. And such person as assessed, shall pay immediately to the township assessor the sum of one dollar for each male dog or spayed female dog. And the sum of two dollars for each additional male dog or spayed female dog. And the sum of three dollars for each female dog (unspayed) so owned, harbored or kept.

12. **Asesssor's receipt; account and payment to township trustee:** SEC. 2. The township assessor shall give to each person a receipt for such money paid him, which shall be designated for dog tax, which receipt shall show the person's name who owns, harbors or keeps the dog, the amount paid, and the number, description and kind of dogs paid for, and whether male or female, and the number of each, which receipt shall relieve the person or persons owning, keeping or harboring such dogs for the current year, extending one year from its date or until the next regular township assessment. Such township assessor shall keep a record of the person or persons owning dogs and a record of the dogs paid for. And he shall keep a stub record or copy of the receipts given by him for money paid him as dog tax; such stub record shall show the amount paid him, the number of dogs, both male and female, paid for, and the person's name, owning the dogs so paid for. And he shall within five days after the completion of the assessment of his township, each year turn over to the township trustee of his township all the records kept by him relating to the collecting and payment of dog tax, and a copy of all receipts given by him to persons having paid him money as dog tax, and all money received by him as dog tax.

13. **Assessor's report of dog tax to county auditor:** SEC. 3. He shall report the amount collected by him as dog tax, and turned over to the township trustee of his township, to the county auditor of his county within three days after making his report to the township trustee of his township. The county auditor shall make a record of the same, and charge the amount against the township trustee of the proper township, as receipts from the dog fund.

14. **Keeping or harboring dog without paying tax; penalty:** SEC. 4. Any person who shall keep or harbor any dog, and shall not have paid the township assessor the tax as above specified and received his receipt for such payment, shall, upon complaint of any resident of the county, be subject to a fine of not less than five nor more than twenty dollars.

15. **Record of dogs on which taxes are not paid; collection of tax:** SEC. 5. It shall be the duty of the township assessor to keep a record of all dogs that shall not be paid for, by whom owned, harbored or kept, and the number of such dogs and the kind, whether male or female, and he shall report the same to the township trustee of his township at the time of making his other report, as above provided,

whose duty it shall be to report the same to the prosecuting attorney of his county, or district, or his deputy, who shall bring an action before any justice of the peace of his county, or in the circuit court of his county, against such persons, upon conviction thereof, and he shall receive the sum of five dollars for each case so prosecuted and such fee shall be charged as part of the judgment and cost against such person so prosecuted: *Provided,* That if any person shall acquire, own, harbor or keep any dog after the assessor shall have completed his assessment, he shall report such dog to and pay to the township trustee of his township the amount of dog tax as above provided and receive his receipt for the same, which receipt shall exempt him from further payment of dog tax on dogs described in said receipt, until the time of the next assessment of his township.

16. **Penalty against officers for failure to perform duties:** SEC. 6. If any township trustee or township assessor shall fail to perform the duties as above provided, they shall be liable to a fine of not less than ten nor more than twenty dollars.

17. **False statement in listing dogs for taxation; penalty:** SEC. 7. Every person liable to taxation in any township in the state of Indiana, and residing therein, when listed for taxation, shall make and subscribe to an oath to the township assessor, in which he shall state the number of dogs, spayed and unspayed over the age of three months, owned, kept and harbored by such person, and any person who shall make a false statement to the assessor or township trustee as to the number, kind and sex of such dogs so owned, kept or harbored by him, shall be fined in any amount not exceeding one hundred dollars.

18. **Mischievous dog may be killed; penalty for keeping such a dog:** SEC. 8. Any dog that is known to have killed, maimed, chased or worried any sheep, cattle, horses, swine or other live stock, or fowls, unless accompanied by his master or some other person, may be killed by any person, and any person who shall own, keep or harbor any dog, after he knows that such dog has killed or maimed, chased or worried any sheep, cattle, horses, swine, other live stock or fowls shall be fined in any sum not less than ten nor more than fifty dollars.

19. **Penalty for harboring untaxed dog:** SEC. 9. It shall be a misdemeanor for any person who does not hold the township assessor's or township trustee's receipt, showing that the required tax has been paid for the same, as provided in this act, to keep, harbor, board or feed, or permit any dog to stay about his, her or their premises, and upon complaint they shall be liable to a fine in any sum not exceeding ten dollars.

20. **Female dog; when not to be allowed at large:** SEC. 10. Any person owning or harboring any female dog, who shall allow such

female dog to run at large during any period of rutting or when in heat, shall be fined not less than five nor more than twenty dollars.

21. **Disbursement of dog fund in payment of damages to owners of live stock injured by dogs:** SEC. 11. Any money derived by the taxing of dogs by the township assessor or township trustee as provided by this act, shall constitute a fund known as the dog fund, which shall be used for the payment of damages sustained by owners of sheep, cattle, horses, swine and other live stock, or fowls killed, maimed or damaged by dogs, within any township of the state of Indiana. Each township trustee shall collect all fines belonging to his township from the different courts, where such fines have been assessed and paid: *Provided*, That no damage shall be assessed or paid on sheep except where individual damage exists or is shown.

22. **Claims for damages to live stock; how ascertained and paid:** SEC. 12. The owners of sheep, cattle, swine, horses, and other live stock or fowls killed, maimed or damaged by dogs, shall within ten days from the time thereof, report to the trustee of his township under oath in which he shall state the number and age as he believes, and the value of such stock or fowls so killed or damaged, and the damages sustained on account of such stock or fowls killed or maimed, in which affidavit he must be joined by two disinterested and reputable freeholders, or householders, and any person or persons who shall make any false statements of such damages, shall upon conviction be fined in any sum, not exceeding one hundred dollars to which shall be added imprisonment in the county jail, for any term not exceeding thirty days: *Provided, however*, That no appraisement shall exceed the actual cash value for which such live stock or fowls would have sold for if placed on the market at the time such damage was sustained: *Provided, further*, That if any township trustee deems the appraisement of such live stock or fowls so killed or maimed to be excessive he shall tender to the owner or owners, or credit upon his books such amount which in his judgment is equal to the injuries sustained and if in any action at law by the owners thereof for the recovery of such damages, said owner shall fail to recover a judgment exclusive of costs for an amount greater than the amount so tendered the defendant shall recover costs of such suit.

23. **Registration of claims for damages; disposition of surplus funds:** SEC. 13. The trustee shall register all losses in the order in which they are reported: *Provided*, That no person shall receive pay for sheep, horses, cattle, swine or other live stock or fowls killed or maimed by any dog or dogs owned or harbored by himself: *Provided, further*, That the dog fund heretofore collected shall be added to and applied with the fund arising under the provisions of this act. And when it shall so occur on the first Monday of March of any year in any township in the state of Indiana that said fund shall accumulate to an amount exceeding one hundred dollars over and above orders drawn on the same,

the surplus aforesaid shall be paid and transferred to the county treasurer of the county in which such township is located and the fund arising from such surplus from the township of the county shall constitute a county dog fund and shall be distributed among the townships of the county in which the orders drawn against the dog fund exceed the money on hand. This distribution shall be made on the second Monday in March of each year, and if said county dog fund be insufficient to pay for all the live stock or fowls maimed or killed by dogs of all the townships the distribution shall be made in the ratio of the orders drawn against the dog fund of the townships and unpaid and unprovided for, which ratio shall be obtained from the report of the trustees of the townships made to the auditor of the county which it is hereby directed shall be made by each township trustee of the county upon the first Monday of March of each year, which report shall show all receipts into the dog fund of his township, and all orders drawn against the same in the order in which they were drawn. And when it shall occur upon the second Monday in March of any year that there is a surplus left of the county dog fund after provisions have been made for the payment for all the live stock or fowls killed or maimed, of all the townships of the county, such surplus shall be distributed for the schools of the county in the same manner the common school revenue of such county is distributed.

24. **Roaming dog may be killed:** SEC. 14. If any dog shall be found roaming over the country unattended by his master or owner, or his owner's agent, it shall be lawful to kill such dog.

III. Cruelty to Animals.

25. **Cruelty to animals; what is; penalty:** Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills or causes or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or cruelly killed, any animal; and whoever, having charge or custody of any animal, either as owner or otherwise, inflicts needless cruelty upon the same, or mutilates the same, or deprives it of natural means of defense or protection, or cruelly or unnecessarily fails to provide the same with proper food, drink, shelter or protection from the weather, shall, on conviction, be fined in any sum not more than two hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding sixty days: *Provided*, That the provisions of this section shall not apply to the docking of lambs, dehorning of cattle, or clipping of horses. [2499.]

26. **Definitions of words in this act:** In this act the word "animal" or "animals" shall be held to include all brute creatures,

doves, pigeons, and all domestic fowls, and the words "owner," "person" and "whoever" shall be held to include corporations as well as individuals ,and the knowledge and acts of agents and all persons employed by corporations in regard to animals transported, owned, or employed by or held in custody of such corporations, shall be held to be the acts and knowledge of such corporations. [2500.]

27. **Keeping animals, fowls or birds for fighting or baiting, or as a target, etc.; penalty:** Any person who shall keep or use any animal, fowl or bird for the purpose of fighting, or baiting, or as a target, or to be shot at, either for amusement or as a test of skill in marksmanship, and any person who shall be a party to or be present as a spectator of any such fighting, baiting or shooting of any animal, fowl or bird, and any person who shall rent any building, shed, room, yard, ground or premises for the purpose of fighting, baiting or shooting any animal, fowl or bird as aforesaid, or who shall knowingly suffer or permit the use of any building, shed, room, yard, ground or premises belonging to him or under his control for any of the purposes aforesaid, shall, on conviction, be fined not more than two hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding sixty days. [2501]

28. **Neglecting decrepit or sick animal or cruelly carrying animals, etc.:** Every owner, possessor or person having the charge or custody of any animal who cruelly drives or works the same or who neglects or abandons such animal when no longer fit for labor, or who shall abandon any maimed, sick, infirm or disabled animal to die in any public place, or who shall carry or cause to be carried upon any vehicle, or otherwise, any living animal, fowl or bird, having the feet or legs tied together, or in any other cruel and inhuman manner, or who shall carry or cause to be carried any live animal upon any vehicle or otherwise, without providing suitable racks, cars, crates or cages in which such animals may stand or lie down during transportation, or whilst awaiting slaughter, shall, on conviction, be fined not more than two hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding sixty days. [2502]

29. **Feed, care and rest for animals in transportation on railroads:** No railroad company in the carrying or transportation of animals shall permit the same to be confined in cars for a longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other unavoidable accident. In estimating the duration of such confinement, the time during which the animals have been confined without rest on connecting roads from which they have been received shall be included, it being the intention of this section to prevent their continuous confinement beyond the period of twenty-eight hours except on contingencies hereinbefore

stated. Animals so unloaded shall be properly fed, watered and sheltered during such rest by the owner or person having the custody thereof, or, in case of his default in so doing, then by the railroad company transporting the same, at the expense of such owner or person in custody thereof; and such company shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any railroad company, owner or custodian of such animals who shall fail to comply with the provisions of this section, shall, on conviction, for every such offense, be fined not less than one hundred dollars nor more than five hundred dollars: *Provided, however,* That when animals shall be carried in cars in which they can and do have the proper food, water, space and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply. [2503]

30. **Complaint; warrant; when search warrant to be issued:** When complaint is made on oath or affirmation to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any of the provisions of the laws of this state in relation to cruelty to animals are being or are about to be violated in any particular building or place, such magistrate, if satisfied that there is a reasonable cause for such belief, shall issue and deliver a search warrant to any sheriff, deputy sheriff, constable or police officer authorizing him to search such building or place, and to arrest any such person or persons engaged in violating any of the provisions of such humane laws, or laws against cruelty to animals, as well as to arrest any person or persons there present and aiding or abetting therein, and to bring all such persons before some magistrate of competent jurisdiction, to be dealt with according to law. Such officer shall, at the same time, seize and bring to such magistrate every article or instrument found in such building or place and especially designed or adapted to inflict wounds upon any animal or other living creature, or adapted to aid in the fighting, baiting, or shooting of any animal, fowl or bird; and if on the trial of a person or persons so arrested it shall be found and adjudged by such magistrate, that such article or instrument is designed or adapted to the wounding or torture of animals, fowls or birds, and that it was intended to be used or employed for such purpose, the magistrate shall cause such article or instrument to be destroyed. [2504]

31. **Duty of officers in making arrests; killing of abandoned, neglected and useless animals, etc.:** It shall be the duty of all sheriffs, deputy sheriffs, constables, policemen, and public officers to arrest and prosecute all persons of whose violation of the provisions of this act they may have knowledge or be credibly informed, or to which their attention is called by any officer or member of any organized humane society of the state who shall at the time exhibit to them in official badge of such society, or other evidence of his official standing

or membership therein; and for each neglect or refusal to perform such duty, the officer so offending shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding twenty-five dollars. Any sheriff, constable, marshal, policeman or agent of any society for the prevention of cruelty to animals, may kill or cause to be killed any animal found to be neglected or abandoned and which, in the opinion of three reputable citizens, should be killed because it is injured or diseased beyond recovery, or by age, has become useless: *Provided*, That at least one of such citizens shall be a reputable veterinary surgeon: *And provided further*, That the owner of such animal, if known, shall be first notified by such officer of his proposed action and shall have the right to select one of such citizens and to be present and to be heard at the examination of such animal. [2505.]

IV. Diseases of Animals.

[In force since April 15, 1905.]

32. **Horses affected with glanders; permitting at large; penalty:** Whoever knowingly permits any horse, mare or gelding affected with the glanders to be taken from his premises, or to run at large, shall, on conviction, be fined not less than five dollars nor more than one hundred dollars. [2506]

33. **Diseased sheep not to be at large; penalty:** Any person, being the owner of sheep, or having the same in charge, who shall turn or suffer any sheep having any contagious disease, knowing the same to be diseased, to run at large upon any common, highway or uninclosed ground, or who shall sell any such sheep, knowing the same to be diseased, without fully disclosing the fact to the purchaser, shall, on conviction, be fined not less than two dollars nor more than twenty-five dollars for each such diseased sheep. [2507]

[In force since April 10, 1907.]

34. **Offering for sale or selling diseased animal; penalty:** SEC. 1. Whoever shall offer for sale, or exchange for anything of value, any horse or mule, knowing the same to be afflicted with "glanders," or any other infectious or contagious disease, or knowing the same to be afflicted with the "heaves," or to be "broken winded," or to be what is popularly known as a "roarer" or a "cribber," and shall conceal the existence of such disease from the person to whom he is offering such animal for sale, or with whom he is attempting to effect an exchange thereof, or who shall employ any trick, artifice, drug, or any device of any character whatsoever to conceal the existence of such disease or defect, and shall thereby effect the sale or exchange of such animal to any person who is ignorant of the existence of such disease or defect, and shall by such sale or exchange obtain any thing of value, shall on conviction

thereof be fined in any sum not exceeding five hundred ($500.00) dollars, to which may be added imprisonment in the county jail or workhouse for a period not exceeding six months.

[In force since April 15, 1905.]

35. **Diseased cattle; "Texas or Spanish fever"; transportation of affected animals:** Every person shall so restrain his diseased or distempered cattle, or such as are under his care, that they may not go at large off his own premises or the land to which they belong; and no person shall drive any diseased or distempered cattle affected with what is commonly known as Texas or Spanish fever, or any other infectious disease, into or through this state, or from one place therein to another, unless it be to remove them from one piece of ground to another of the same owner, without passing over a public highway; and no railroad company or owner of a steamboat, or any other company or person, shall bring into this state, except for the purpose of being carried through into another state on a continuous journey, or transport from one part thereof to another any Texas, Mexican, Cherokee or Indian cattle affected as above. [2509]

36. **Liability of railroad company or owner of steamboat and others for damages:** Any person, railroad company or owner of any steamboat, who shall offend against or violate any of the provisions of the next preceding section, shall be liable for all damages sustained on account of such Texas or Spanish fever, or other infectious disease, being communicated from any such diseased cattle to any other cattle in the neighborohood or along the line of such transportation, or removal of such diseased cattle into or through this state, or from any part thereof to another; and the existence or presence of such Texas or Spanish fever, or other contagious or infectious disease, among the native cattle of this state, on the same range with or in the vicinity of any such Texas, Mexican, Cherokee, Indian or other cattle, or along the line or route over which they were removed or transported, shall be *prima facie* evidence that the same were affected with such disease at the time of being removed or transported, and communicated it to such native cattle so affected therewith. [2510.]

37. **Diseased hog carcass; penalty for hauling or transporting over public highway:** Whoever hauls, moves or transports upon any public highway the carcass, or any part thereof, of any hog that shall come to its death from disease; or whoever shall so haul, move or transport upon any such highway any hog while such animal is afflicted with disease shall, on conviction, be fined not less than ten dollars nor more than five hundred dollars, or may be imprisoned in the county jail not exceeding six months or may be punished by both such fine and imprisonment, the hauling, moving or transporting of any such hog, carcass or part thereof, to, or by the owner or employe of, any rendering or dessicating establishment, shall be *prima facie* a violation

of this section: *Provided however*, that the provisions of this section shall not apply to the streets, alleys or public highways of any incorporated town or city. [2511]

[In force since March 11, 1867.]

38. **Hog cholera; duty of owner afflicted with:** SEC. 1. In all cases where any hog, shoat, or other domestic animal shall die of the disease commonly called "hog cholera," or any other disease, it shall be the duty of the owner or owners of such hog, shoat, or other domestic animal, or the person or persons having the care and custody of the same, having knowledge of the fact, or upon receiving notice thereof, to cause the carcass of such hog, shoat, or other domestic animal, without unnecessary delay, to be burned or safely and securely buried.

39. **Penalty upon owner or custodian for failure to perform duty:** SEC. 2. If any owner or owners of any such hog, shoat, or other domestic animal, so dying with disease, or any person or persons having the care and custody thereof, having knowledge of the fact, or upon receiving notice thereof, shall fail, neglect or refuse to comply with the provisions of the preceding section he, she, or they, so offending, shall be guilty of a misdemeanor, and, upon conviction thereof before any tribunal having cognizance of the offense, shall be fined in any sum not less than ten dollars nor more than fifty dollars.

[In force since February 9, 1869.]

40. **Cattle infected with Texas fever; unlawful to bring into state:** SEC. 1. It shall be unlawful for any person to bring into the state of Indiana any cattle infected with the disease commonly known as the "Texas or Spanish fever," or any cattle liable to impart said fever to other cattle.

41. **Liability for damages growing out of violation:** SEC. 2. Any person who shall violate the provisions of the foregoing section of this act shall be liable for all damages growing out of and arising from the importation and introduction into the state of Indiana of any cattle infected with the disease commonly known as "Texas or Spanish fever," or any cattle liable to impart said disease to other cattle; said damages to be recovered by the person or persons sustaining said damages of and from the owner or owners of the cattle imparting such disease.

42. **Evidence of infection; what shall be; liability of owner of infected animals for damages:** SEC. 3. Whenever any Texas or Cherokee cattle liable to impart said disease shall be brought into the state of Indiana, and any such disease as "Texas or Spanish fever" shall make its appearance within sixty days, and infect other cattle with said disease that have been on the same highway, common, or pasture ground traveled over by such Texas or Cherokee cattle, such fact shall be deemed and taken as *prima facie* evidence that said Texas or Cherokee cattle were infected with the disease known as the "Texas or Spanish fever,"

and that they did impart said disease; and the owner or owners of said Texas or Cherokee cattle at the time of the bringing of said cattle into the state, and the owner or owners of said cattle at the time said disease shall make its appearance, shall be jointly or severally liable for any damages resulting from said disease.

43. Evidence defendant may offer against claim for damages: SEC. 4. Whenever Texas or Spanish fever is imparted within sixty days to cattle on any highway, common, or pasture ground over which more than one drove or herd of said Texas or Cherokee cattle have passed, the owner or owners of each herd or drove of said cattle shall be jointly or severally liable for all damages resulting from said disease: *Provided*, That in the trial of any cause in which damages may be claimed on account of said disease having been imparted to cattle, any defendant in any such cause may have the right to introduce competent testimony that may tend to prove that his or her herd of Texas or Cherokee cattle did not impart said disease to such cattle; and if any defendant in any such cause shall prove to the satisfaction of the court or jury trying any such case, that his or her herd of Texas or Cherokee cattle did not impart said disease, the defendant making such proof shall not be liable to pay any damages resulting from such disease.

[In force since May 15, 1901. Sections 17 to 24 were added March 8, 1909.]

44. State veterinarian; how appointed; qualifications necessary; term of office: SEC. 1. That an office is hereby established, to be known as the state veterinarian of Indiana. The office of state veterinarian of Indiana shall be filled by appointment by the governor; the person so appointed shall be a competent and qualified veterinarian of large experience, and shall be a graduate of a reputable veterinary college in the United States, Canada or Europe. The term of office of the state veterinarian shall be four years, but he may be removed for cause.

45. Duties of state veterinarian: SEC. 2. That it shall be the duty of the state veterinarian to protect the health of the domestic animals of the state, and to determine the most efficient and practical means for the prevention, suppression, control and eradication of dangerous, contagious and infectious diseases, and to investigate the cause, nature, means of prevention and treatment of such diseases as he may deem advisable, and for these purposes he is hereby authorized and empowered to establish, maintain, enforce and regulate such quarantine and other measures relating to the movements and care of animals and their products, the disinfection of suspected localities and articles, and the destruction of such animals and property as he may deem necessary, and to adopt from time to time all such regulations as may be necessary and proper for the carrying out of the purposes of this act: *Provided, however*, That in the case of any slowly contagious disease, only suspected or diseased animals shall be quarantined.

46. **Killing of animals infected with tuberculosis; claims for such animals; provisions for payment:** SEC. 3. That when it shall be deemed necessary to kill any animal or animals or to destroy any property to prevent further spread of disease or to protect the health of the public by the slaughter of animals infected with tuberculosis, the state veterinarian or his agent may adjust the claim with the owner or his agent: *Provided,* The amount to be paid is less than twenty-five dollars; if the claim exceed twenty-five dollars, or an agreement can not be made with the owner or claimant for the amount thereof, three appraisers, who shall be freeholders in the county, shall be appointed, one by the state veterinarian or his agent, one by the owner or claimant and a third by the two appointed, as aforesaid, who shall under oath or affirmation appraise the animal, animals or property, taking into consideration their or its actual value at the time of appraisement and the amount of such appraisement shall be paid out of the state treasury with the approval of the state veterinarian on warrants of the auditor of state: *Provided,* That right to indemnity shall not exist and the payment of such shall not be made in the following cases: For animals belonging to the United States; for animals belonging to the state; for animals brought into the state contrary to the rules and regulations of the state veterinarian; for animals found to be diseased, or that are destroyed because they have been exposed to disease before or at the time of their arrival in the state; for an animal which was previously affected by any other disease, which from its nature and development was incurable and necessarily fatal; for an animal which the owner knowingly or wittingly purchased affected with disease, or from a place where contagious disease was known to exist; for an animal brought into the state within one year prior to such slaughter. [As amended: See p. 443, Acts of 1909.]

47. **Certain sheep to be dipped:** SEC. 4. That all sheep consigned to or passing through stockyards shall be dipped before leaving, if intended for any other purposes than immediate slaughter in the state, the time of dipping, the manner of dipping, and kind of dip used to be subject to the approval of the state veterinarian: *Provided,* That in the winter and at such times as the dipping of sheep would be hazardous to their health, the sheep may be withdrawn upon permit from the state veterinarian, which permit shall be issued upon the written agreement of the owner that the sheep will remain in his possession, and that he will dip at such future time and in such manner as the state veterinarian may direct. That all sheep found affected with scabies shall be dipped at such time and in such manner and with such dip, as the state veterinarian shall direct, and at the expense of the owner.

48. **State veterinarian authorized to enter premises:** SEC. 5. That the state veterinarian or his authorized agent shall at all times have the right to enter any premises, farms, fields, pens, abattoirs, slaughter-

houses, buildings, cars, or vessels, where any domestic animals are at the time quartered, or wherever the carcass of any one may be, for the purpose of examining it in any way that may be deemed necessary to determine whether they are or were the subjects of any contagious or infectious disease.

49. **Rules of U. S. Dept. of Agriculture; acceptance of by state:** SEC. 6. That the state veterinarian may accept in behalf of the state, the rules and regulations prepared and adopted by the department of agriculture of the United States, for the suppression of any contagious diseases among domestic animals, and shall co-operate with the authorities of the United States in the enforcement of such rules and regulations.

50. **Inspection and quarantine by bureau of animal industry, etc.:** SEC. 7. That the inspectors of the bureau of animal industry shall have the same right of inspection, quarantine and condemnation of animals affected with any contagious or infectious disease or suspected to be so affected, or that may have been exposed to any such disease, and for such purposes they may enter upon any ground or premises, they may call upon the sheriffs, constables and other peace officers to assist them in the discharge of their duties, and such sheriffs, constables or peace officers shall assist such inspectors when so requested, and such inspectors shall have the same power and protection as peace officers, when engaged in the discharge of their duties: *Provided*, That this state shall not be liable for any damages or expenses caused or made by such inspectors.

51. **Proclamation by governor; when to be made:** SEC. 8. That whenever the governor has good reasons to believe that any disease has become epidemic in another state or territory, and that the importation of animals from such state or territory would be prejudicial to the health of the domestic animals of this state, he must, by proclamation, designate such locality or localities, and prohibit the importation therefrom of any live stock of the kind diseased, except under such rules and regulations as the state veterinarian shall prescribe.

52. **Reports of disease; who shall make:** SEC. 9. That any person knowing or suspecting a dangerous, contagious or infectious disease to exist among live stock shall report the same to the local health officer, who shall, within twenty-four hours, report the same to the state veterinarian. The state veterinarian or his agent shall visit the locality and make an examination of the suspected stock and prescribe and enforce such rules ad regulations as may be necessary: *Provided*, That an owner of an animal or animals affected with a dangerous or contagious disease, shall report the same within forty-eight hours after knowing such to exist.

53. **State veterinarian to investigate reports:** SEC. 10. The state veterinarian shall, as far as possible, investigate such diseases of animals as are communicable to man, and such conditions of dairies as the state board of health may request.

54. **Penalty for violation of provisions of this act:** SEC. 11. Any person or persons, any company or corporation, wilfully violating any of the provisions of this act, or any regulation or order of the state veterinarian, or agent appointed by him, shall be deemed guilty of misdemeanor and shall, upon conviction, be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days, or both, at the direction of the court.

55. **Assistants, supplies, oaths, milk inspection:** SEC. 12. That the state veterinarian is hereby empowered to appoint and employ such assistants or agents, and to purchase supplies and materials as may be necessary in carrying out the provisions of this act; that the state veterinarian or his duly appointed agents are empowered to administer oaths or affirmations, that they may make such examinations into the conditions of the live stock of the state in relation to contagious and infectious diseases, including milk supplies of cities, towns and villages as may seem necessary, and to take proper measures to protect such milk supplies from contamination. That all placed upon the market for sale must be of a temperature not to exceed sixty degrees. The decision of the state veterinarian in all matters pertaining to diseases of domestic animals and his orders as to their disposition, shall be final. He may call upon any peace officer for assistance in the discharge of his duties and such peace officer shall give assistance. [As approved March 8, 1909.]

56. **Rules and regulations: publication; reports, etc.:** SEC. 13. That the state veterinarian shall, from time to time, publish the rules and regulations pertaining to the control and suppression of dangerous, contagious and infectious diseases of domestic animals, and such regulations shall have the force and effect of laws of the state of Indiana. He shall make an annual report to the governor of all work done and a statement of expenditures.

57. **Salary of state veterinarian; expenses; payment; warrants for property destroyed:** SEC. 14. That the governor, auditor of state and treasurer of state shall constitute a committee to determine the salary of the state veterinarian and to audit his accounts, and upon the certification by the governor to the auditor of state the amount due the state veterinarian and assistants for salary and expenses, the auditor shall draw his warrant upon the treasurer for said amount in favor of the state veterinarian and assistants respectively, payable out of the funds hereinafter appropriated; and upon further certification by the governor to the auditor of state of the amount due any person for an animal or animals condemned or property destroyed, the auditor shall draw his warrant upon the treasurer for the amount so certified, payable out of the funds hereinafter appropriated: *Provided*, That said committee shall not receive additional compensation for said work: *And further pro-*

vided, That the salary of the state veterinarian shall not exceed twelve hundred dollars and necessary traveling expenses in one year.

58. **Annual appropriation:** SEC. 15. That the sum of five thousand dollars is hereby appropriated annually for carrying out the provisions of this act. [As approved March 8, 1909.]

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The following sections, Nos. 17, 18, 19, 20, 21, 22, 23 and 24, were added March 8, 1909:

59. **Live stock remedies; when to be submitted to state veterinarian for examination:** SEC. 17. That it shall be unlawful for any person to use, offer for sale or exchange, or to give any substance for the prevention or treatment of any contagious or infectious disease which contains living germs in a virulent or attenuated state and which may at the time of its use or any subsequent time cause an outbreak of the same or any other contagious or infectious disease, without first submitting a sample of the preparation to the state veterinarian for examination, and if, in his judgment such preparation may jeopardize the health of any domestic animal because of the danger of exciting or spreading a contagious or infectious disease, such preparation shall not be used, sold or exchanged or given away.

60. **Muzzling of dogs; power of state veterinarian to order:** SEC. 18. That the state veterinarian shall have the power to order and enforce the restraint or muzzling of all dogs in a locality where a case of rabies has occurred, the extent of the locality and the duration of the restraint or muzzling to be determined by him.

61. **Mallein and tuberculin; recognized as diagnostic agents:** SEC. 19. That mallein shall be recognized as a diagnostic agent for glanders and tuberculin as a diagnostic agent for tuberculosis.

62. **Tests for tuberculosis by state veterinarian; when same may be made:** SEC. 20. That the state veterinarian may test cattle for tuberculosis when such animals are to be shipped out of the state and an official certificate is necessary to insure prompt entrance into another state or territory; that the test may be made when it is desired to bring stock into the state for breeding or dairy purposes; that the test may be made when requested by breeders and dairymen; or when the state veterinarian has good reason to believe, on physical examination and evidence of disease, and that animals of certain herds are diseased.

63. **Animals reacting upon test; rights of owners:** SEC. 21. That the owner of an animal reacting to the tuberculin test shall have a reasonable time in which to prepare it for market, the time to be determined by the state veterinarian, and that the reacting animal shall be slaughtered subject to post mortem inspection under the federal rules and regulations governing meat inspection. That the owner of a reacting animal or animals shall have the privilege of retaining them for

breeding purposes under conditions approved by the state veterinarian. That the owner of dairy cattle may keep them for dairy purposes, provided that the milk is pasteurized in a manner to be approved by the state board of health, and provided that the cow or cows show no physical evidence of disease nor in any other way show the discharge of tuberculous material. That any animal showing physical evidence of tuberculosis may be condemned. That the certification of the state veterinarian as to the physical condition of any animal shall be final and accepted by the health officer in the state.

64. **Fees for tests by state veterinarian:** SEC. 22. That in case stock are tested at the request of the owner or his agent, a fee shall be charged and collected to cover the actual expenses as nearly as can be estimated and no part thereof shall belong to the state veterinarian and any surplus arising from such fees shall be paid into the state treasury, and the amount of the fee and the rate of pay for testing shall be determined by the state veterinarian.

65. **Tag for tested animals; penalty for imitating, etc.:** SEC. 23. That the state veterinarian use a distinctive tag or mark to designate tested animals and any one found to be guilty of imitating such tag or mark, removing or defacing such tag or mark shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in section 11.

66. **Shipments into state; certificate of test to be furnished:** SEC. 24. That it shall be unlawful to bring into this state any cattle for breeding or dairy purposes, without a certificate from the state veterinarian or authorized official of the state from where such cattle are imported, or official recognized by the state veterinarian of this state, showing that such cattle have been tested and that they are not affected with tuberculosis or other contagious disease: *Provided*, That cattle may be brought into the state on permit from state veterinarian subject to test after being received. Any person violating any provision of this section shall, upon conviction, be punished as provided in section (11) eleven.

[In force since March 5, 1897.]

67. **Disinfection of hog cars and pens:** SEC. 1. That it shall be the duty of all railroad companies and all stock yard associations operating in this state to thoroughly cleanse and disinfect all cars in which hogs are shipped to their yards, immediately after unloading the hogs from the cars, and to keep their pens in which hogs are kept thoroughly cleansed and disinfected. And it shall be the duty of the managers of all fair grounds in the state, where swine are placed on exhibition, to thoroughly cleanse and disinfect and to keep cleansed and disinfected all the pens in which swine are kept, and all crates in which swine are brought to such fair shall be cleansed and disinfected immediately upon their being received at the fair grounds. And it shall be the duty of the managers of such fairs, before receiving any swine into such pens, to

require and take from the proposed exhibitor an affidavit that the swine presented for exhibition have not within the two months last past, been exposed to any swine disease, and that he did before shipping such swine wash the same with solution containing not less than one-tenth part of pure carbolic acid and that the car in which such swine were shipped was thoroughly cleansed and disinfected before said swine were loaded in it.

68. **Diseased hogs; driving upon public highway; allowing to run at large; shipping; burning carcasses:** SEC. 2. That it shall be unlawful for any person to drive upon any public highway, or suffer to run at large or to ship in any vehicle or railroad car, any swine, knowing the same to be infected with any disease, but the breeder or owner of any herd of swine which becomes infected with any disease, may within five days after the first indication that such herd is so infected, separate and ship and market all well and healthy hogs from such herd; and it shall be the duty of all breeders and owners of hogs in this state which die with any disease to burn each carcass to ashes within ten hours after death.

69. **Diseased hogs drinking from stream; when unlawful to allow:** SEC. 3. It shall be unlawful for any one owning or controlling swine, knowing the same to be infected with disease, to allow such swine to have access to any stream of running water in this state, so that the water in such running stream to which such diseased swine have had access may flow down through the lands of others from where such infected herd is kept.

70. **Penalties for violating this act; further directions as to burning dead hogs:** SEC. 4. That any manager of any railroad company or the manager of any stock yards, operating in this state, who shall fail or refuse to cleanse and disinfect the cars at such yards, or fail to keep their pens cleansed and disinfected as required by this act, and any managers of fair grounds who shall fail or refuse to cleanse and disinfect their pens and crates and require from the exhibitor the affidavit required in this act, and any person who drives upon any public highway or suffers to run at large or ships in any vehicle or railroad car any swine, knowing the same to be infected with disease, and any breeder or owner of any herd of swine which becomes infected with any disease who, shall after five days from the time he discovers said herd is so infected, shall ship and market hogs from such diseased herd or shall fail and refuse to burn the carcasses of hogs in such herd, dying from such disease as provided in this act; if any owner or owners of any such hok or shoat so dying with disease or any person or persons having the care or custody thereof having knowledge of the fact ten hours, or upon receiving notice thereof ten hours shall fail, neglect or refuse to comply with the provisions of the preceding section it shall be lawful for any person or persons to enter upon the premises, after notifying the owner of the same where the carcass or carcasses of any

hog or shoat may be, and burn such carcass or carcasses, committing no unnecessary damage and for each carcass so burned, he, she, or they may recover the sum of one dollar for each carcass so burned, in a civil action before any justice of the peace of the township where the defendant or one of the defendants resides, from the owner or owners of any such hog or shoat, or from any persons or persons having the care and custody thereof; and any person who shall allow swine infected with any disease to have access to any stream of running water on his premises, then he and they or any person or persons who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction before any court having criminal jurisdiction shall be fined in any sum not less than twenty-five dollars and not more than five hundred dollars.

[In force since March 9, 1903.]

71. **Further directions as to disposal of dead hogs:** SEC. 1. That it shall be the duty of every owner or occupant of land outside of incorporated cities and towns to bury or cremate the carcass of every hog found upon such land immediately after such owner or occupant shall have knowledge of the death of such hog. It shall be the duty of every owner or occupant of any premises in any incorporated city or town, on which premises is found the carcass of any hog, to bury, cremate or deliver or cause to be delivered to some rendering or dessicating establishment, immediately after such owner or occupant shall have knowledge of the death of such hog. It shall also be the duty of every owner or occupant of any land or premises within the state on which the carcass of any animal other than a hog is found, to bury, cremate or deliver or cause to be delivered to some rendering or desiccating establishment, immediately after such owner or occupant shall have knowledge of the death of such animal. It shall further be the duty of every spervisor of roads to bury or cremate the carcass of every hog found in any highway within his district, immediately after such supervisor shall have knowledge of the death of such hog. It shall further be the duty of such supervisor to bury, cremate or deliver or cause to be delivered to some rendering or dessicating establishment the carcass of every animal, other than a hog, found in any highway within his district, immediately after such supervisor shall have knowledge of the death of such animal.

72. **Penalty for violating provisions of this act:** SEC. 2. Any person or officer who shall violate any of the provisions of this act by failing so to bury, cremate or deliver or cause to be delivered to such rendering or desiccating establishment the carcass of any animal, as required by the provisions of this act, within twenty-four hours after knowledge of the death of such animal shall come to such officer or person, shall be deemed guilty of a misdemeanor, and upon conviction

thereof shall be fined in any sum not less than five dollars nor more than twenty-five dollars.

73. **Road supervisor's duty to enforce provisions of this act; duty as to disposal of carcass; costs, etc.:** SEC. 3. It shall be the duty of every supervisor of roads to enforce the provisions of this law, and if he shall have knowledge that any owner or occupant of any land shall have failed to comply with any of the provisions of this act, it shall be his duty to bury, cremate, or deliver or cause to be delivered to some rendering or desiccating establishment the carcass of such animal as provided for in this act, and to collect the cost thereof and two dollars per day additional for his services from such owner or occupant.

V. Keeping Sire for Service; License; Lien on "Get."

[In force since May 10, 1889.]

74. **License to keep sire for service:** SEC. 1. The owner of any improved stock sire who desires to charge a service fee for such sire, may file with the county clerk of any county or counties in this state, in which such sire is kept for service, a sworn statement, which shall give the name, age, description, breeding and pedigree of such sire, and if registered in any herd or stud book, his number and volume of such registry and the clerk shall thereupon issue to such owner a license which shall embody said sworn statement under his hand and official seal, authorizing such owner to keep such sire for service in such county or counties, and charge therefor such fee for service as the owner of the dam may agree to pay, and such clerk shall be entitled to charge and receive a fee of fifty cents, and no more, for taking and filing such sworn statement and issuing such license.

75. **Copies of license shall be posted in vicinity:** SEC. 2. A copy of such license embracing such sworn statement and pedigree, with the fee the owner proposes to charge for service, shall be posted by the owner of such sire in two or more conspicuous places, in the vicinity of the place where such sire is kept for service, and should any part of said sworn statement be, to the knowledge of the owner of such sire, false in any particular, the owner shall not be entitled to collect any fee for such service and the falsity of such statement, or any part thereof, may be pleaded in bar to any contract or account for service of such sire.

76. **Lien on "get" and manner of obtaining same:** SEC. 3. The owner of any sire, who having complied with the provisions of this act and obtained such license and posted the same as herein required, may have and obtain a lien upon the "get" of any sire, for the amount of the fee agreed upon for such service, or if no note or written agreement is made, then for the amount of the advertised fee charged for such service, which lien shall date back to the time of the rendition of such

service, and run for two years from the date of such service: *Provided, however,* That said lien shall not be valid as against any innocent purchaser of such dam, unless the person entitled to said lien shall, within 18 months from the rendition of such service, file in the office of the recorder of the county where the owner of said dam resided, a written notice containing a description of said dam, the name of the owner, the name of the sire, and the name and residence of his owner, the date of said service, and the amount due for the same, together with any written contract which may have been made at the time of the rendering of such service, and the filing of the same shall be notice to all of the existence of such lien, and such lien may be enforced by suit before any justice of the peace of any township in this state where such "get" may be found, at any time within eighteen months from the date of the filing of such notice, but not afterwards. [As approved March 8, 1909. See Acts of 1909, p. 401.]

77. **Record of notice to be made in office of county recorder:** SEC. 4. It is hereby made the duty of the recorder of each county in this state to provide and keep in his office a book wherein he shall record the notice provided for in section 3 of this act, and for the recording of each one of which said notices the said recorder shall be entitled to receive the sum of twenty-five cents, to be paid him by the person filing the same in his office, and upon the payment of the fee or price of such service, the owner of such sire shall acknowledge payment thereof, in writing, upon the face of said record, which said acknowledgments shall be attested by the said recorder, who shall receive therefor a fee of ten cents.

78. **Suit to enforce lien:** SEC. 5. If the price of said service be not paid at the expiration of the credit given therefore, the person entitled to the same may enforce the same by suit before such justice, and a certified copy of such notice, under the hand and seal of such recorder, shall be sufficient complaint in a suit before such justice of the peace to enforce such lien, and should the owner of the dam fail to pay the judgment rendered by such justice for such service, the "get" of such sire shall be sold on execution, without relief from valuation or appraisement laws to satisfy such judgment.

79. **Owner of dam who shall attempt to prevent lien; penalty:** SEC. 6. Any person having bred a dam to such sire who shall sell or dispose of the same, knowing such fee to be due and unpaid and without making any provision for the payment of the same and to avoid the lien created by this act, or who shall run off, or in any wise conceal the "get" of such sire with intent to cheat, hinder and defraud the person entitled to said lien, or with intent to prevent a sale of such "get" for the payment of said lien, as in this act provided, or who, owning any dam shall falsely and fraudulently represent that she has been bred to any improved sire other than the one she has actually been bred to,

for the purpose of inducing any one to buy or trade for such dam, shall be deemed guilty of of a misdemeanor, and on conviction thereof may be fined in any sum not exceeding fifty dollars.

VI. Commercial Feeding Stuff for Animals.

[In force since April 10, 1907.]

80. Statement to state chemist: SEC. 1. That before any concentrated commercial feeding stuff is sold, offered or exposed for sale in Indiana, the manufacturer, importer, dealer, agent or person who causes it to be sold, or offered for sale, by sample, or otherwise, within this state, shall file with the state chemist of Indiana at the Indiana agricultural experiment station, Purdue University, a statement that he desires to offer such concentrated commercial feeding stuff for sale in this state, and also a certificate, the execution of which shall be sworn to before a notary public, or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand or trade-mark under which the concentrated commercial feeding stuff will be sold, the ingredients from which the concentrated commercial feeding stuff is compounded, and the minimum percentage of crude fat and crude protein allowing one per cent. of nitrogen to equal six and twenty-five hundredths per cent. of protein, and the maximum percentage of crude fiber which the manufacturer, or person offering the concentrated commercial feeding stuff for sale guarantees it to contain; these constituents to be determined by the methods recommended by the association of official agricultural chemists of the United States.

NOTE: — Sections 2, 3, 4, 5, 6, 7, 8, 9 and 10 of this act provide for the labelling and stamping of packages containing such feed, for fees for the registration of certificates, for sworn annual statements by manufacturers of feed, for accounting and use of fees for registering, inspecting and analyzing feeding stuffs, for penalties for the unlawful sale of concentrated commercial feed stuffs, for power of state chemist to procure samples, for penalty for obstructing inspection of such feeding stuff, for rules, regulations and standards concerning such feed stuffs, and defining the duties of the prosecuting attorney in cases of violation of this act.

81. Concentrated feeding stuffs defined. SEC. 11. The term "concentrated commercial feeding stuff" as used in this act, shall include linseed meals, cocoanut meals, gluten feeds, gluten meals, germ feeds, corn feeds, maize feeds, dairy feeds, starch feeds, sugar feeds, dried brewers' grains, malt sprouts, dried distillers' grains, dried beet refuse, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, peanut meals, oat feeds, corn and oat feeds, corn bran, wheat bran, wheat middlings, wheat shorts and other mill by-products not excluded in this section, ground beef or fish scraps, dried blood, blood meals, bone meals, tankage, meat meals, slaughter house waste products, mixed feeds, clover

meals, alfalfa meals and feeds, peavine meal, cotton seed meal, velvet meal sucrine, mixed feeds, and mixed meals made from seeds or grains, and all materials of similar nature used for food for domestic animals, condimental feeds, poultry feeds, stock feeds, patented proprietary or trade and market stock and poultry feeds; but it shall not include straw, whole seeds, unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat and broom corn, nor wheat flours or other flours.

VII. Liability of Railroad for Killing Stock.

[In force since July 2, 1877.]

82. Liability of railroad for stock killed: SEC. 1. Any railroad corporation, lessee, assignee, receiver, and other person or corporation, running, controlling or operating any railroad into or through this state, shall be liable jointly or severally, for stock killed or injured by the locomotives, cars, or other carriages run on such road, in the name in which the road was run or operated at the time, to the extent and according to the provisions of this act; and the bills of lading usually issued at any railroad station in the county in which such stock was killed or injured shall be *prima facie* evidence as to the character or name in which said railroad was owned, held, controlled, or operated.

* * * * * *

83. No liability if road fenced: SEC. 7. This act shall not apply to any railroad securely fenced in, and if such fence be properly maintained by such company, lesee, asignee, receiver or other person running the same.

NOTES: — If animals are injured at a place where a railroad is not required to be fenced, the company is only liable for the injury when the same is caused by its negligence. Railroad Co. v. Shriner, 6 Ind. 141.

For further liability of railroads for killing live stock, see Chapter on Fences.

VIII. Miscellaneous.

84. Animal brands; altering: Whoever maliciously alters or defaces the mark or brand of any horse, mare, gelding, foal, filly, jack, mule, ass, sheep, goat, cattle or hog of another, or marks or brands any such animal, with intent to steal the same, shall, on conviction, be fined not less than ten dollars nor more than five hundred dollars, to which may be added imprisonment in the county jail not exceeding six months. [2321]

85. Animals; injury or killing: Whoever maliciously or mischievously injures or kills, by administering poison, or by means of a deadly weapon, or in any other manner, any horse, mare, gelding, foal, filly, jack, mule, ass, sheep, goat, cattle or hog of another shall, on

conviction be fined not less than five dollars nor more than five hundred dollars to which may be added imprisonment in the county jail not exceeding twelve months. [2322]

[In force since June 3, 1891.]

86. **Entering horses under assumed names:** SEC. 1. In order to encourage the breeding of and improvement in trotting and pacing horses in the state of Indiana, it is hereby made unlawful for any person or persons, knowingly, to enter or cause to be entered, for competition or to compete for any purse, prize, premium, stake or sweepstakes offered or given by any agricultural or other society, association, person or persons in the state of Indiana, any horse, mare, gelding, colt or filly under an assumed name, or out of its proper class, where such prize, purse, premium, stake or sweepstakes is to be decided by a contest of speed.

87. **Penalty:** SEC. 2. Any person or persons found guilty of a violation of section one of this act shall, upon conviction thereof, be imprisoned in the state's prison for a period of not less than one year or more than three years, or imprisoned in the county jail of the county in which he is convicted for any definite period not less than six months, or shall be fined in any sum not exceeding one thousand dollars.

88. **Changing names of horses:** SEC. 3. The name of any horse, for the purpose of entry for competition in any contest of speed, shall not be changed after once having contested for a prize, purse, premium, stake or sweepstakes, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted.

Law of Estrays: For law regarding stray animals, see Chapter on Fences.

CHAPTER 2.

Bees.

I. Inspection of bees by state entomologist.
II. Ownership of bees in flight.
III. Bee-trees, bees and honey.
IV. Bees as a nuisance.
V. When owner of bees liable for damages.

I. Inspection of Bees by State Entomologist.

[Approved March 5, 1909.]

(Sections 1, 2 and 3 applying to diseased nursery stock are omitted here.)

89. State entomologist made inspector of apiaries: SEC. 4. The state entomologist shall be and is hereby constituted state inspector of apiaries and as such inspector it shall be his duty to aid and assist in the development and protection of the bee and honey industry in this state and to adopt and carry out proper measures for the prevention and suppression of contagious and infectious diseases among bees.

90. Powers of state entomologist as to apiaries: SEC. 5. The state entomologist shall have full power and authority at his discretion to visit and examine any apiaries for the purpose of discovering whether or not any disease may exist among bees in any part of the state. When notified of the existence or the probable existence of foul brood or other contagious or infectious diseases among bees in any apiary in the state he shall visit and examine said apiary so reported and all other apiaries in the same neighborhood that he may be informed about by diligent inquiry or otherwise, for the purpose of determining whether such disease exists or not. Whenever he shall be satisfied of the existence of foul brood or other diseases in their malignant form in any apiary it shall be his duty to order all colonies so affected, together with all hives occupied by them, and the contents of those hives and all tainted appurtenances that cannot be disinfected and that might cause the further spread of the disease to be immediately destroyed by fire under his personal supervision and care, but where said entomologist, who shall be the sole judge thereof, shall be satisfied that the disease exists in incipient stages, and is being or may be treated successfully, and he shall have reason to believe that it may be entirely cured, then he may in his discretion omit to destroy or order the destruction of the colonies

or hives in which the disease exists. Whenever the disease shall be found to exist and the treatment for the same shall be ordered by the state entomologist, he shall give to the owner or person in charge of the apiary instructions as to the manner of treatment of such apiary, and to see that such treatment be carried out, and should the said owner or person in charge of said apiary refuse or fail to carry out the said instruction to the complete eradication of the disease, or the satisfaction of the state entomologist, he shall destroy or order to be destroyed all said diseased colonies by fire as provided for in case of disease in its malignant form.

91. **Power to order transfer of bees:** SEC. 6. The state entomologist shall have full power in his discretion to order any owner, possessor, or person having charge of bees dwelling in box hives (having mere boxes without frames), in apiaries where disease exists, to transfer such bees to movable frame hives, within a specified time, and in default of such transfer he shall order destroyed or destroy all such box hives and the bees dwelling therein.

92. **Right to enter premises where bees are kept:** SEC. 7. The said state entomologist shall have the right to enter for the performance of his duties upon any premises where bees are kept.

93. **Annual report to governor of inspection of bees:** SEC. 8. The state entomologist shall include in his annual report to the governor such information in regard to the work of the apiary inspector and bee culture as he may deem of importance to the state.

94. **Dealing in diseased bees or appliances; penalty:** SEC. 9. Any owner of any apiary where disease exists or any person or persons, company or corporation who shall sell, barter or give away, or import into this state any colonies or colony of bees or appliances infected with disease, or expose to the danger of other bees any comb, honey, bee hives or appliances or things infected with the disease, or conceal the fact that disease exists among his or their bees when disease is known to exist, or refuses to allow the state entomologist to inspect or treat any apiary or appliances or shall resist, hinder or impede him in any way in the discharge of his duties under the provisions of this act, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars ($10) nor more than twenty-five dollars ($25).

95. **Duties of bee keepers as to foul brood:** SEC. 10. Every bee keeper or other person who is aware of the existence of foul brood or other infectious or contagious diseases either in his own apiary or elsewhere, shall immediately notify the state entomologist of the existence of such disease, and in default of so doing shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not more than ten dollars ($10).

96. **Definition of apiaries:** SEC. 11. Apiaries within the meaning of this act shall be any place where one or more hives, swarms, or colonies of bees shall be kept.

97. **Orders for treatment; affidavit of owner of bees:** SEC. 12. Whenever as the result of an official inspection the state entomologist or any of his deputies shall order the treatment of removal of any trees, vines, shrubs or plants, or shall order the treatment or destruction of any bee hives, frames or other appurtenances connected with apiculture he may require that an affidavit shall be filed by the owner or person in charge of the property so affected in which it shall be stated that the treatment ordered has been carried out to the best of the affiant's ability, and that the work had been effective for the purpose prescribed. Any person making any such affidavit, knowing the same to be false, shall be guilty of perjury.

98. **Salaries of deputies and inspectors:** SEC. 13. The state entomologist shall have the authority to employ such deputies and assistants as the work of the office may require. They shall hold office for such periods of time as the work of the office may require and in their appointment the state entomologist shall consider only their fitness for the work which they will undertake, disregarding entirely all political affiliations. The salary of no deputy shall exceed twelve hundred dollars ($1,200) per annum. The inspector of apiaries shall receive for his services the sum of one thousand dollars ($1,000) per annum in addition to his salary as state entomologist. Such compensation to be paid out of the general appropriation for this act.

Ownership of Bees in Flight.

99. **Ownership of bees in flight:** A swarm of bees going from the hive could be reclaimed if they could be followed and were known. Merrills vs. Goodwin, 1 Root 209; and whoever shall pursue the swarms which belong to others, and by striking on the brass shall draw them with the delightful sound to fix near him, let him make restitution for the damage. Puffendorf's Law of Nature, 4 Chap. 6, Sec. 5, quoting Plato's Laws.

"Bees are wild by nature; therefore, although they swarm upon your tree, they are not reputed, until they are hived by you, to be more your property than the birds which have nests there; so, if any person inclose them in a hive he becomes the proprietor. The honey-combs also, if any, become the property of him who takes them; but clearly, if you observe any person entering into your grounds, the object (bees) untouched (by the intruder intending to take the bees) you may justly hinder him. A swarm which hath flown from your hive is still reputed to continue yours as long as it is in sight; and may easily be pursued; but in any other case it will become the property of the occupant." Cooper's Justinian Inst. Lib. 2 Tit. 1, Sec. 14.

III. Bee Trees, Bees and Honey.

100. **Bee-trees; bees and honey:** The mere finding of bees in a tree on the land of another person gives the finder no right to the bees or to the tree. State vs. Repp, 104, Iowa, 305.

A trespasser who finds bees on the land of another and hives them, but is not the owner of the hive in which he puts or the land on which he leaves them, has no interest in them which is the subject of larceny. State vs. Repp, 104 Iowa, 305.

Where a man discovers bees in a tree on the land of another and marked the tree with the initial of his name, such finder is not vested with any exclusive right of property in the bees, and could not maintain an action against another person for cutting down the tree and carrying away the bees. Gillet vs. Mason, 7 Johns, 16.

Bees are animals ferae naturae, but when hived and reclaimed a qualified property may be acquired in them.—Gillett vs. Mason, 7 Johns 16.

Wild bees in a bee tree belong to the owner of the soil where the tree stands. — Ferguson vs. Miller, 1 Cow, 243.

Though a person obtains leave from the owner to take them this does not confer ownership upon him until he has taken actual possession of the bees, and another person also with such leave, first obtaining possession, acquires the title. — Idol vs. Jones, 2 Dev. L., 162.

If a person finds a tree containing a hive of bees on the land of another, and marks the tree, he does not thereby reclaim the bees, and he can not maintain an action against another person for carrying away the bees and honey. — Gillet vs. Mason.

Bees when hived are the property of the one who has reclaimed them, although they temporarily escape. — Goff vs. Kilts, 15 Wend. 550; Walter vs. Mease, 3 Binn 546.

101. **Bees as a nuisance:** Bees may become a nuisance, as where they interfere with the owner of adjoining premises in the use and enjoyment of the same. — Olmstead vs. Rich, 25 N. Y. R. S. 271.

102. **Owner liable for damage caused by bees; where:** The owner of bees may be liable for negligence in locating them where persons or animals will be exposed to attack in passing or standing near the hives was decided in the case of Parsons vs. Mansen, 119 Iowa, 88. The court in rendering the decision used the following language:

"A keeper of bees must exercise ordinary prudence in locating their hives so as to avoid unnecessary danger to those who are likely to make lawful use of the premises or the highway near by; so, such keeper may be found guilty of negligence in locating their hives within a few feet of a post which he has fixed for fastening horses, where he knows that they are prone to attack perspiring horses."

CHAPTER 3.

Bounties.

I. For killing certain animals and birds.
II. For producing silk.

[In force since March 10, 1875.]

103. Wolf and fox scalps: SEC. 1. The commissioners of each county may cause to be paid out of the county treasury a sum not exceeding twenty dollars to any person who shall exhibit to them a wolf scalp, and a sum not exceeding five dollars to any person who may exhibit to them a fox scalp: *Provided,* That such person shall take and subscribe an oath that the wolf or the fox, to which such scalp belonged, was killed in the county, and that no reward therefor has been paid him out of such treasury. But no more than three dollars shall be paid for the killing of any wolf under the age of six months, nor more than one dollar and fifty cents for the killing of any fox under the age of six months.

[In force since March 8, 1883.]

104. Bounty for woodchuck, owl or hawk; proof: SEC. 1. That the board of commissioners of each county may cause to be paid out of the county treasury a sum not exceeding two dollars to any person who shall exhibit to the auditor of the county a woodchuck scalp, or the head of any owl or hawk: *Provided,* That such person shall take and subscribe an oath that the woodchuck, owl or hawk, to which such scalp or head belonged, was killed in the county, and that no reward therefor has been paid him out of the county treasury. *And, provided also,* That the provisions of this act shall not apply to sparrow-hawks or screech-owls.

[In force since May 6, 1853.]

105. Bounty on silk: SEC. 1. The board of county commissioners of any county may, at its option, allow on silk raised in the county, at the following rates: For every pound of cocoons, fifteen cents; for every pound of reeled silk, twenty-five cents, on the conditions contained in the following section.

106. Silk bounty; how obtained: SEC. 2. Any resident of the state may present to any justice of the peace of the county in which he resides, one pound or more of good, dry silk cocoons or of well-reeled silk; and if such resident shall, by his own oath or that of any other

credible person, establish, to the satisfaction of such justice, that the cocoons presented were raised in such county, or (as the case may be) that the silk was reeled in such county from cocoons raised within the state, and that no portion of such cocoons or reeled silk had before been presented to any justice for examination and certificate, such justice shall issue his official certificate, specifying the number of pounds of cocoons or reeled silk presented, the date, the owner's name and residence, and the names, if any, of the testifying witnesses; which certificate shall be, to the board of county commissioners, sufficient evidence of the facts therein stated, and shall be retained and filed by such board. No bounty shall be allowed by such board, except in pursuance of such certificate.

CHAPTER 4.

Chattel Mortgages.

I. Execution and recording.
II. Chattel mortgage on household goods.
III. Removal of mortgaged goods from county.

[In force since May 6, 1853.]

107. Chattel mortgages; execution and recording: No assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, where such goods are not delivered to the mortgagee or assignee and retained by him, unless such assignment or mortgage shall be acknowledged as provided in case of deeds of conveyance, and recorded in the recorder's office of the county where the mortgagor resides, if he resides in this state, and if not a resident of the state, then in the county where said property is situated, within ten days after the execution thereof.

[In force since March 8, 1897.]

108. Mortgage of household goods; sale: SEC. 1. That no mortgage of household goods which may be executed after this act shall take effect, shall authorize the mortgagee to sell such mortgaged property; and any provision in any such mortgage giving the mortgagee the power of sale, shall be void. But every sale of household goods to satisfy a mortgage thereon shall be under a judicial proceeding, in which such mortgage shall be foreclosed, in the circuit or superior court.

109. Possession and title of goods: SEC. 2. The mortgagee of household goods shall not be entitled to the possession of the mortgaged property unless the mortgage specially provides that the mortgagee shall have possession of the mortgaged property from the time the mortgage is executed until sale, as provided in this act, and the mortgagee takes actual possession of such property when the mortgage is executed, and holds it continuously until sale. In all other cases the possession of the mortgaged property shall remain in the mortgagor until he is divested of his title by sale, as provided in section one (1) of this act.

110. Receipt for payments: SEC. 3. It shall be the duty of the holder of any mortgage on household goods or the agent of such holder or mortgagee whose duty it is to receive money on such mortgage, when any money, check or anything taken in payment on such mortgage or interest due thereon is received by them from the mortgagor, or from

any person acting for the mortgagor, to execute a receipt to the mortgagor, which receipt shall be dated and signed by the mortgagee or his agent, and shall state the date and the amount of the loan secured by such mortgage, the amount of money actually paid to the mortgagor on such loan, the amount of money charged by the mortgagee or his agent for services and expenses in connection with said loan, the rate of interest, the amount of the payment received and how applied, and the amount yet unpaid on said loan, and when it will be due. If any such holder or mortgagee or the agent of such holder or mortgagee, whose duty it is to receive payments, shall fail to execute and deliver such receipt to the mortgagor such mortgage shall be void.

111. **Mortgaged goods; removal of from county:** A mortgagor of personal property in possession of the same, who, without the written consent of the owner of the claim secured by the mortgage, removes any of the property mortgaged out of the county where it was situated at the time it was mortgaged, or secretes or converts the same or any part thereof to his own use, or sells the same or any part thereof to any person without informing him of the existence of such mortgage, shall, on conviction, be fined not exceeding three hundred dollars, to which may be added imprisonment in the county jail not exceeding six months.

CHAPTER 5.

Conveyance of Land.

112. Conveyance of land; how made: Conveyances of lands or of any interest therein, shall be, by deed in writing, subscribed, sealed, and duly acknowledged by the grantor or by his attorney, except *bona fide* leases for a term not exceeding three years. [3947]

113. Conveyance of wife's lands: The joint deed of the husband and wife shall be sufficient to convey and pass the lands of the wife. [3952]

114. Release and quitclaim: A deed of release or quitclaim shall pass all the estate which the grantor could convey by a deed of bargain and sale. [3955]

115. Deed and record thereof: No conveyance of any real estate in fee-simple or for life or of any future estate, and no lease for more than three years from the making thereof, shall be valid and effectual against any person other than the grantor, his heirs and devisees, and persons having notice thereof, unless it is made by a deed recorded within the time and in the manner provided in this act. [3957]

116. Form of warranty deed: Any conveyance of lands worded in substance as follows: "A. B. conveys and warrants to C. D. [*here describe the premises*], for the sum of [*here insert the consideration*]" — the said conveyance being dated, and duly signed, sealed and acknowledged by the grantor — shall be deemed and held to be a conveyance in fee-simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims. [3958]

117. Form of quitclaim deed: Any conveyance of lands worded in substance as follows: "A. B. quitclaims to C. D. [*here describe the premises*], for the sum of [*here insert the consideration*], the said conveyance being duly signed, sealed and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quitclaim to the grantee, his heirs and assigns. [3959]

118. Unnecessary words: It shall not be necessary to use the words "heirs and assigns of the grantee," to create in the grantee an estate of inheritance; and if it be the intention of the grantor to convey any lesser estate, it shall be so expressed in the deed. [3960.]

119. **Form of mortgage:** Any mortgage of lands worded in substance as follows: "A. B. mortgages and warrants to C. D. [*here describe the premises,* to secure the re-payment of [*here recite the sum for which the mortgage is granted or the notes or other evidences of debt, or a description thereof, sought to be secured, also the date of the re-payment*]," the said mortgage being dated and duly signed, sealed and acknowledged by the grantor, shall be deemed and held to be a good and sufficient mortgage to the grantee, his heirs, assigns, executors and administrators, with warranty from the grantor and his legal representatives of perfect title in the grantor and against all previous incumbrances. And if, in the above form, the words "and warrant" be omitted, the mortgage shall be good, but without warranty. [3691]

120. **Time of recording:** Every conveyance or mortgage of lands or of any interest therein, and every lease for more than three years, shall be recorded in the recorder's office of the county where such lands shall be situated; and every conveyance or lease not so recorded in forty-five days from the execution thereof, shall be fraudulent and void as against any subsequent purchaser, lessee or mortgagor in good faith and for a valuable consideration. [3962]

121. **Leases of lands; recording:** That every lease of real estate for a longer period than three years shall be recorded in the miscellaneous record, in the recorder's office of the county in which such lands shall be situated, and every lease for a longer period than three years, not so recorded within forty-five days from the execution thereof, shall be void as against any subsequent purchaser, lessee, or mortgagee, in good faith, and for a valuable consideration. [3963]

122. **Acknowledgment or proof:** To entitle any conveyance, mortgage, or instrument of writing to be recorded, it shall be acknowledged by the grantor, or proved before any judge or clerk of a court of record, justice of the peace, auditor, recorder, notary public or mayor of a city in this or any other state, or before any commissioner appointed in any other state by the governor of this state, or before any minister, *charge d'affaires,* or consul of the United States in any foreign country. [3965]

123. **Acknowledgment in another county:** When any conveyance, mortgage, or other instrument required to be recorded, is acknowledged in any county in this state other than the one in which the same is required to be recorded, the acknowledgment shall be certified by the clerk of the circuit court of the county in which such officer resides, and attested by the seal of said court, but an acknowledgment before an officer having an official seal, if attested by such official seal, shall be sufficient without such certificate. [3966]

124. **Acknowledgment in another state:** To entitle to record, in this state, conveyances acknowledged out of this state and within the United States, the same must be certified by the clerk of any court of

record of the county in which the officer receiving the acknowledgment resides, and attested by the seal of said court; but an acknowledgment before an officer having an official seal, attested by his official seal, shall be sufficient without such certificate. [3967]

125. **Form of acknowledgment:** The following, or any other form substantially the same, shall be a good and sufficient form of acknowledgment of any deed or mortgage. [3982]

Before me, E. F. [*a judge or justice, as the case may be*], this —— day of ——, A. B. acknowledged the execution of the annexed deed [*or mortgage, as the case may be.*]

CHAPTER 6.

Dairy and Food Laws.

[In force since March 4, 1907.]

126. Drugs and foods; adulteration of; definition of terms: SEC. 1. That it shall be unlawful for any person, firm or corporation, within this state to manufacture for sale within this state, offer for sale therein, or sell within this state, any drug or article of food which is adulterated or misbranded within the meaning of this act. * * * The term "food," as used herein, shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed or compound.

127. Adulteration of food; what constitutes: SEC. 2. That for the purpose of this act an article shall be deemed as adulterated:

In case of food:

First. If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength;

Second. If any substance has been substituted wholly or in part for the article;

Third. If any valuable constituent has been wholly or in part abstracted from it;

Fourth. If it consists in any proportion of a filthy, diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal;

Fifth. If it is mixed, colored, coated, polished, powdered, or stained in a manner whereby damage or inferiority is concealed, or whereby it is made to appear better or of greater value than it really is;

Sixth. If it contains any added poisonous or other added deleterious ingredient;

Seventh. If it contains any added antiseptic or preservative substance except common table salt, saltpeter, cane sugar, vinegar, spices, or, in smoked food, the natural products of the smoking process, or other harmless preservatives whose use is authorized by the state board of health.

128. Sale of adulterated milk or milk from diseased cows, etc., unlawful; refuse of distilleries not to be used as feed; standard quality of milk: SEC. 3. That no person either by his servant or agent, or as the servant or agent of another person, shall sell, exchange or deliver, or have in his custody or possession with intent to sell,

exchange or deliver, expose or offer for sale or exchange, adulterated milk or milk to which water or any foreign substance has been added, or milk produced from cows which have been fed on the refuse of distilleries, or from sick or diseased cows, or as pure, milk from which the cream or a part thereof has been removed, or milk which is not of standard quality, or milk collected and kept or handled under conditions which are not cleanly and sanitary, or milk containing less than eight and one-half per cent. of milk solids exclusive of fat, and 3.25 per cent. of milk fat, or milk which contains any added color or preservative: *Provided, however*, "refuse of distilleries" shall not be construed to mean or apply to dried distillers' grains in sound condition.

129. **Sale of unsanitary meats, eggs or poultry unlawful:** SEC. 4. That it shall be unlawful for any person or persons, firm or corporation, to sell within this state or to have in his or their possession to sell within this state for human food, the carcass or parts of carcasses of any animal which has been slaughtered, prepared, handled or kept under unsanitary conditions; and unsanitary conditions shall be deemed to exist wherever and whenever any one or more of the following conditions appear or are found, to wit: If the slaughter house is dilapidated and in a state of decay, if the floors or side walls are soaked with decaying blood or other animal matter, if efficient fly screens are not provided, if the drainage of the slaughter house or slaughter house yard is not efficient, if maggots or filthy pools or hog wallows exist in the slaughter house yard or under the slaughter house; if the water supply used in connection with the cleansing or preparing is not pure and unpolluted; if hogs are kept in the slaughter house yard or fed therein on animal offal, or if the odors of putrefaction plainly exist therein; if carcasses or parts of carcasses are transported from place to place when not covered with clean white cloths, or if kept in unclean, bad smelling refrigerators, or if kept in unclean or bad smelling cold storage rooms. It shall be unlawful for any person, firm or corporation to sell or offer for sale any eggs, after the same have been placed in an incubator, or to sell or offer for sale, knowingly, eggs in a rotten, decayed or decaying condition to be used for food. It shall be the duty of all peace and all health officers to seize any animal carcass or parts of carcasses, or any domestic or wild fowl, eggs, game or fish found to be unwholesome and which are intended for sale or offered for sale for human food or which have been slaughtered and prepared, handled or kept under unsanitary conditions as herein defined, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained, and said police judge or said justice of the peace shall issue warrants of arrest for all persons believed to have violated the provisions of this section, and said cause shall be tried at an early date thereafter. Any person, persons, firm or corporation found guilty of violating any of the provisions of

this section shall be fined not less than ten nor more than one hundred dollars for each offense, and the meat in question shall be drenched with kerosene oil or rendered into grease and tankage as the court may direct.

NOTE: — Sections 5, 6, 7, 8 and 9 relate to the duties of manufacturers of food and to the food and drug commissioner and other officers, etc.

130. **Penalties for violation of this act:** SEC. 10. That, except as elsewhere provided in this act, any person, persons, firm or corporation violating any of the provisions of this act, shall upon conviction for the first offense, be punished by a fine of not less than $10.00 nor more than $30.00; for the second offense, by a fine of not less than $25.00 nor more than $100.00; and for the third and subsequent offenses, by a fine of $100.00 and imprisonment in the county jail for not less than thirty nor more than ninety days.

NOTE: — Section 11 relates to the duties of the prosecuting attorney in the prosecution of persons violating this act.

131. **Selling unwholesome provisions; penalty:** Whoever knowingly sells, or has in his possession with intent to sell, or exposes for sale, any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, or whoever knowingly sells or exposes for sale any article or substance intended to be eaten or drunk, and shall, by label or in any other way, represent it to be other than what it is; or whoever kills, for the purpose of sale, any calf less than four weeks old, or sells, or has in his possession with intent to sell, the meat of any calf which he knows to have been killed when less than four weeks old, shall, on conviction, be fined not less than ten dollars nor more than five hundred dollars, to which may be added imprisonment in the county jail not less than ten days nor more than six months. [2444.]

[In force since April 10, 1907.]

132. **Distributing drug samples unlawful:** SEC. 1. That it shall be unlawful for any person, firm, corporation or association to distribute or cause to be distributed any sample of medicine from house to house in this state, or to give or cause to be given to any child under the age of sixteen years any such sample of medicine. The word medicine as herein used is hereby construed to mean any preparation of a medicinal nature intended for internal or external use.

133. **Distributing deleterious substances unlawful:** SEC. 2. It shall be unlawful for any person, firm, corporation or association to distribute or cause to be distributed from house to house any substance, liquid or solid which is deleterious to the life, limb or health of any person; or to give or cause to be given any such substance to any child under the age of sixteen years.

134. **Penalty:** SEC. 3. Any violation of any of the provisions of sections one (1) or two (2) shall be punishable by a fine of not less than five dollars nor more than fifty dollars, to which may be added imprisonment in the county jail not to exceed six months.

135. **Meaning of "house to house"** SEC. 4. The term from "house to house" as herein used is hereby construed to include the premises, or yard, connected with any residence in this state, as well as any veranda, portico, or porch connected with any house; or the house or residence itself.

136. **Candy; adulteration of unlawful; penalty:** No person shall, by himself, servant or agent, nor as the servant or agent of any other person, firm or corporation, manufacture for sale or knowingly sell or offer for sale any candy adulterated by the admixture of terra alba, barytes, talc or any other mineral substance, or by poisonous colors or flavors or by other ingredients deleterious or detrimental to health. Any person or corporation violating any of the provisions of this section shall, on conviction, be fined not less than fifty dollars nor more than one hundred dollars; and the candy so adulterated shall be confiscated and destroyed under the direction of the court. [2450.]

137. **Vinegar; adulteration of unlawful; penalty:** Every person who manufactures for sale, or offers or exposes for sale, as cider vinegar any vinegar not the product of pure apple juice, or into which any foreign substance, ingredient, drug or acid has been introduced, shall, for each such offense, on conviction, be fined not less than twenty-five dollars nor more than one hundred dollars. [2451.]

138. **Vinegar containing injurious ingredients; penalty:** Every person who manufactures for sale, sells, or offers or exposes for sale, any vinegar containing any preparation of lead, copper, sulphuric acid or other ingredient injurious to health, shall, for each such offense, on conviction, be fined not less than ten dollars nor more than one hundred dollars. [2452.]

139. **Selling or having in possession adulterated vinegar; penalty:** No person shall, by himself, his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver or have in his custody or possession with intent to sell or exchange or expose or offer for sale or exchange, any adulterated vinegar, nor shall he label, brand or sell as cider vinegar any vinegar not the product of pure apple juice; and any person so offending shall, on conviction, for each such offense, be fined not less than ten dollars nor more than one hundred dollars. [2453.]

140. **Further provisions and penalties as to vinegar:** All vinegars shall have an acidity equivalent to the presence of not less than four per centum by weight of acetic acid, and in case of cider vinegar shall in addition contain not less than 1.6 per centum by weight of

cider vinegar solids upon full evaporation over boiling water, and if any vinegar contain less than the above amount of acidity, or in the case of cider vinegar if it contain less than the above named amount of acidity and of cider solids, it shall be deemed to be adulterated. Every person making or manufacturing cider vinegar who is not a domestic manufacturer for his own use thereof, shall brand on each keg, barrel or bottle containing such vinegar the name and residence of such manufacturer, the date when same was manufactured, and the words "cider vinegar." No vinegar shall be branded fruit vinegar unless the same shall be made from apples, grapes or other fruit. Whoever violates any of the provisions of this section shall be fined for each such offense not less than ten dollars. [2454.]

141. **Selling diseased animal; penalty:** Whoever kills, for the purpose of sale, any sick, diseased or injured animal, or sells or has in his possession with the intent to sell, the meat of any such sick or diseased or injured animal, shall, on conviction, be fined not less than fifty dollars nor more than five hundred dollars, to which may be added imprisonment in the county jail not more than six months. [2455.]

142. **Selling unwholesome milk; penalty:** Whoever shall knowingly sell to any person or persons, or sell, or deliver or bring to be manufactured to any cheese or butter manufactory in this state, any milk diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk," or shall keep back any of the milk known as "strippings" with intent to defraud, or shall knowingly sell milk, the product of a sick or diseased or injured animal or animals, or any milk produced from any cow fed upon the refuse of any distillery or brewery, or upon any substance deleterious to the quality of the milk, or shall knowingly use any poisonous or any deleterious material in the manufacture of any cheese or butter, or shall knowingly sell or offer to sell any cheese or butter in the manufacture of which any poisonous or deleterious substance has been used, shall, on conviction, be fined not less than fifty dollars nor more than five hundred dollars. [2456.]

143. **Use of adulterants unlawful; penalty:** It shall be unlawful for any person, firm or corporation to sell, or to have in his or its possession for sale, any article of food or food product intended for the use of man, or any compound, substance, preparation or material used as such food or intended to be used as such food as [or] food product, or used or intended to be used as an ingredient of any such food or food product, or used or intended to be used in the preparation of any such food or food product, if any such article, compound, substance, preparation or material contain any arsenic, formaldehyde or antiseptic injurious to health. Any person, firm or corporation violating any of the provisions of this section shall, on conviction, be fined not exceeding one hundred dollars for each offense. [2457.]

144. **Food for animals; penalty for adulterating:** Whoever manufactures for sale, or offers or exposes for sale, or sells, as bran, shipstuff, shorts, offal or mill-feed manufactured out of wheat, intended for the use of animals, any bran, shipstuffs, shorts, offal or mill-feed which is adulterated with any substance not a legitimate part of pure bran, shipstuff, shorts, offal or mill-feed, shall, on conviction, be fined not less than twenty dollars nor more than one hundred dollars. [2458.]

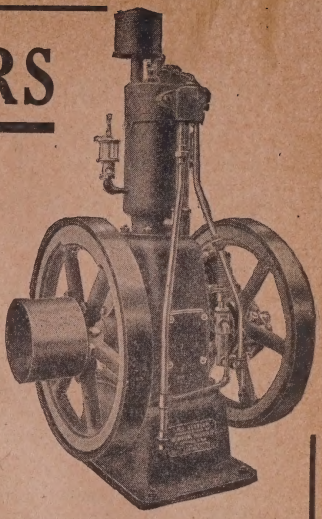
145. **Native wines; penalty for adulterating:** Whoever adulterates any wine or juice made or expressed from grapes, by mixing therewith any drugs, chemicals, cider, whisky or other liquor, and sells, or offers to sell, any such adulterated wine or grape-juice, knowing the same to be adulterated, shall, on conviction, be fined not less than ten dollars nor more than one hundred dollars. [2459.]

146. **Liquors; penalty for adulterating:** Whoever adulterates any spirituous, malt or other intoxicating liquor by the admixture of any deleterious substance therewith, and knowingly sells, or offers for sale, any such liquors which have been so adulterated, shall, on conviction, be fined not less than ten dollars nor more than one hundred dollars. [2460.]

147. **Making or selling poisonous liquors; penalty:** Whoever uses any poison in the manufacture or preparation of any intoxicating liquor, or knowingly sells, or offers for sale, in any quantity, any intoxicating liquor so manufactured or prepared, shall, on conviction, be imprisoned in the state prison not less than one year nor more than seven years, and fined not exceeding five hundred dollars. [2461.]

148. **Befouling water of well, cistern, spring, brook, etc.; penalty:** Whoever maliciously or mischievously puts any dead animal, carcass or part thereof, or any other putrid, nauseous, noisome or offensive substance, into, or in any manner befouls, any well, cistern, spring, brook canal or stream of running water or any reservoir or water works, of which any use is, or may be made for domestic purposes, shall, on conviction, be fined not less than five dollars nor more than one hundred dollars, to which may be added imprisonment in the county jail not less than ten days nor more than sixty days.

MONEY MAKERS



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CHAPTER 7.

Descent of Property.

[In force since May 6, 1853.]

149. **To children equally:** SEC. 1. The real and personal property of any person dying intestate shall descend to his or her children in equal proportions; and posthumous children shall inherit equally with those born before the death of the ancestor.

150. **When and how to grandchildren:** SEC. 2. If any children of such intestate shall have died intestate, leaving a child or children, such child or children shall inherit the share which would have descended to the father or mother; and grandchildren and more remote descendants and all other relatives of the intestate, whether lineal or collateral, shall inherit by the same rule: *Provided*, That if the intestate shall have left, at his death, grandchildren only, alive, they shall inherit equally.

151. **When to parents and brothers and sisters:** SEC. 3. If any intestate shall die without lawful issue or their descendants alive, one-half of the estate shall go to the father and mother of such intestate, as joint-tenants, or, if either be dead, to the survivor, and the other half to the brothers and sisters and to the descendants of such as are dead, as tenants in common.

152. **How brothers, sisters and parents take:** SEC. 4. If there be neither father nor mother, the brothers and sisters of the intestate living, and the descendants of such as are dead, shall take the inheritance as tenants in common. If there be no brothers or sisters of the intestate or their descendants, the father and mother shall take the inheritance as joint tenants; and if either be dead, the other shall take the estate.

153. **When no heirs under preceding rules:** SEC. 5. If there be no person entitled to take the inheritance according to the preceding rules, it shall descend in the following order:

First. If the inheritance came to the intestate by gift, devise, or descent from the paternal line, it shall go to the paternal grandfather and grandmother, as joint tenants, and to the survivor of them; if neither of them be living, it shall go to the uncles and aunts in the paternal line, and their descendants, if any of them be dead; and if no such relatives be living, it shall go to the next of kin, in equal degree of consanguinity, among the paternal kindred; and if there be none of the paternal kindred entitled to take the inheritance as above prescribed, it shall go to the maternal kindred in the same order.

Second. If the inheritance came to the intestate by gift, devise, or descent from the maternal line, it shall go to the maternal kindred in the same order; and if there be none of the maternal kindred entitled to take the inheritance, it shall go to the paternal kindred in the same order.

Third. If the estate came to the intestate otherwise than by gift, devise, or descent, it shall be divided into two equal parts, one of which shall go to the paternal and the other to the maternal kindred, in the order above described; and on the failure of either line, the other shall take the whole.

[In force since March 2, 1907.]

154. **Causing death, no inheritance:** SEC. 1. That no person who unlawfully causes the death of another and shall have been convicted thereof, or aids or abets in such unlawful killing of another, shall take by devise or descent any part of the property, real or personal, owned by the decedent at the time of his or her death.

[Act of May 6, 1853, Continued.]

155. **Kindred of the half-blood:** SEC. 6. Kindred of the half-blood shall inherit equally with those of the whole blood; but if the estate shall have come to the intestate by gift, devise or descent from any ancestor, those only who are the blood of such ancestor shall inherit: *Provided*, That on failure of such kindred, other kindred of the half-blood shall inherit as if they were of the whole blood.

156. **When estate reverts to donor:** SEC. 7. An estate which shall have come to the intestate by gift or by conveyance, in consideration of love and affection, shall, if the intestate die without children or their descendants revert to the donor, if living, at the intestate's death, saving to the widow or widower, however, his or her rights therein: *Provided*, That the husband or wife of such intestate shall hold a lien upon such property for the value, at the intestate's death, of all improvements by him or her thereon, and for all moneys derived from the separate estate of such husband or wife expended in making such improvements.

157. **To illegitimate child, from mother:** SEC. 8. Illegitimate children shall inherit from the mother as if they were legitimate, and through the mother, if dead, any property or estate which she would, if living, have taken by gift, devise, or descent from any other person.

[In force since July 24, 1853.]

158. **When from father to illegitimate child:** SEC. 1. The real and personal estate of any man dying intestate, without heirs resident in any of the United States at the time of his death, or legitimate children capable of inheriting without the United States, shall descend to and be vested in his illegitimate child or children who are residents of this state or any of the United States; and such illegitimate child or

children shall be deemed and taken to be the heir or heirs of such intestate in the same manner, and entitled to take by descent or distribution to the same effect and extent as if such child or children had been legitimate: *Provided*, That the intestate shall have acknowledged such child or children as his own during his life-time: *And provided, further*, That the testimony of the mother of such child or children shall in no case be sufficient to establish the fact of such acknowledgment.

[In force since May 15, 1901.]

159. **Illegitimate child inheriting from father:** SEC. 1. That the illegitimate child or children of any man dying intestate and having acknowledged such child or children during his life time as his own, shall inherit his estate, both real and personal, and shall be deemed and taken to be the heir or heirs of such intestate in the same manner and to the same extent as if such child or children had been legitimate. *Provided*, That the testimony of the mother of such child or children shall in no case be received to establish the fact of such acknowledgment: *And be it provided*, That the provisions of this act shall not apply where the father of the illegitimate child, at his death, had surviving legitimate children or descendants of legitimate children.

[Act of May 6, 1853, Continued.]

160. **Bastard, how made legitimate:** SEC. 9. If a man shall marry the mother of an illegitimate child, and acknowledges it as his own, such child shall be deemed legitimate.

161. **From illegitimate child to mother:** SEC. 10. The mother of an illegitimate child dying intestate, without issue or other descendants, shall inherit his estate: and if such mother be dead, her descendants or collateral kindred shall take the inheritance in the order hereinbefore prescribed.

162. **When estate escheats:** SEC. 11. The estate of a person dying intestate, without kindred capable of inheriting, shall escheat to the state, and shall be applied to the support of common schools, in the manner provided by law.

[In force since March 5, 1883.]

163. **Sale of escheated estates:** SEC. 1. In all cases where estates have escheated, or hereafter shall escheat, to the state, for want of heirs or kindred entitled to the inheritance, the board of commissioners of the county wherein such estate is situated, are hereby authorized to dispose of the same by sale, in such manner as may seem best for the interests of the common school fund; and to reinvest the proceeds of such sale in the manner directed by law for the investment of other moneys belonging to the common school fund: *Provided*, That all real estate, so sold, shall be first appraised by three disinterested freeholders of the county, who shall be first sworn to faithfully per-

form their duty as such appraisers; and shall not be sold at less than said apraisement: *And provided, further,* That in case said real estate fail to sell for the full amount of said appraisement within six months after being first offered for sale, in such case, said commissioners may order a new appraisement thereof.

164. **Warranty deed:** SEC. 2. Upon full payment being made for such lands, a warranty deed therefor, to the purchaser, or his or her heirs or asignees, shall be executed by the county auditor, and be entered in the commissioners' record before delivery.

[In force since April 10, 1907.]

165. **Unclaimed estates; action by state:** SEC. 2. The attorney-general shall institute in the name of the state in the superior court of Marion county, Indiana, a joint action in equity against the known or unknown heirs of all such persons as have heretofore died and whose estates, money, property or fees have been paid into the state treasury and are now carried upon the accounts thereof as "unclaimed estates." Such action shall be prosecuted for the purpose of determining by the judgment of such court whether such estates and the money so in the state treasury, shall escheat to the state and become a part of its common school fund. Notice of such action shall be given by publication of notice for sixty days by one insertion each week for eight consecutive weeks in some daily newspaper printed and published in the city of Indianapolis. Any heir of any such deceased person may appear in such action and assert his heirship by answer to the state's bill, and the court shall hear such cause and give judgment on behalf of such heirs as shall establish their interest in any such funds and order the same paid out of any such funds in the state treasury, less such costs of such proceeding as are chargeable to such heir. If no heir appears to claim any part of any such funds, the court shall give judgment separately against each of such funds and the unknown heirs of the decendent, vesting the title and ownership of such funds in the state of Indiana for the use and benefit of its common school funds, as provided in the constitution and laws of such state, and such judgment shall be final and conclusive and shall not be subject to review or appeal unless heirs appear therein, and then only in so far as they are affected thereby: *Provided,* That no such funds shall be included in such action which have not been on deposit in the state treasury for the five (5) years next before the filing of such action. The costs of such action, not adjudged against the heirs appearing therein, shall be paid out of the state treasury on the order of the auditor of state: *Provided, further,* That the attorney-general shall not be allowed or paid any compensation whatever for his services in any such action, nor for the services of any deputies; the auditor of state, after the final determination of such proceeding shall distribute to the several counties in this state all such funds as such court shall have determined to be a part of the

common school funds, and such distribution shall be made in accordance with section one of this act. All such funds as are now in the state treasury to the account of unclaimed estate, which shall not be included in the suit provided for in this section, shall escheat to the state and become a part of its common school fund and be distributed as such, as provided in this act, after the lapse of five (5) years from the approval of this act, unless the same shall before that time be paid to heirs entitled to receive the same, as now provided by law, and after the lapse of such time no claim to any such funds shall be presented, allowed or paid by any court or officer. Hereafter the title of any such funds as shall be paid into the state treasury on account of unclaimed estates, and shall remain in the state treasury for five (5) years without any heir appearing to claim the same, shall vest in the state of Indiana for the use of the common school funds and shall be distributed as such, as provided in this act. Any heir claiming any portion of such funds, who shall not present such claim within such time as is fixed by this act, shall be barred from thereafter asserting any such claim. It shall be the duty of the auditor of state in the month of December of each year to cause to be published in some newspaper printed and published in the city of Indianapolis, a single notice stating the names decendant and the sum held on account of each then remaining in the state treasury to the credit of unclaimed estates.

[In force since April 23, 1903.]

166. **Escheated land in Lawrence and Monroe counties:** SEC. 1. That in all cases where lands located in Lawrence or Monroe county have escheated, or hereafter shall escheat to the state for want of heirs or kindred entitled to the inheritance, such lands shall not be sold by the board of commissioners of the county where such estate is situated, but the title to all of such lands shall be and remain in the state of Indiana, and such lands shall be devoted to educational purposes.

167. **Indiana University controls:** SEC. 2. The control and management of all such lands shall be vested in the trustees of Indiana University, and such lands may be used by said trustees for any proper educational purposes.

168. **Use of land; designation:** SEC. 3. Said board of trustees may in its discretion set off any portion of such grounds to the use of the state board of forestry or to that of Purdue University, or any other educational or scientific institution of the state.

[Act of May 6, 1853, Continued.]

169. **Advancements:** SEC. 12. Advancements in real or personal property shall be charged against the child or descendants of the child to whom the advancement is made in the division or distribution of the estate, but if the advancement exceed the equal proportion of the child advanced, the excess shall not be refunded.

170. **Advancement; how estimated:** SEC. 13. In the division or distribution of an estate, the amount or value of an advancement shall be estimated according to the amount or value when given.

Section 14 same as section 2930.

171. **Rules subject to rights of husband or wife:** SEC. 15. Every rule or descent or distribution prescribed by this act shall be subject to the provisions made in behalf of the surviving husband or wife of the decedent.

172. **Courtesy and dower abolished:** SEC. 16. Tenancies by the courtesy and in dower are hereby abolished.

173. **What descends to widow:** SEC. 17. If a husband die testate or intestate, leaving a widow, one-third of his real estate shall descend to her in fee-simple, free from all demands of creditors: *Provided, however,* That where the real estate exceeds in value ten thousand dollars, the widow shall have one-fourt only, and where the real estate exceeds twenty thousand dollars, one-fifth only, as against creditors.

174. **Widow remarrying, can not alienate:** SEC. 18. If a widow shall marry a second or any subsequent time, holding real estate in virtue of any previous marriage, and there be a child or children or their descendants alive by such marriage, such widow may not, during such second or subsequent marriage, with or without the assent of her husband, alienate such real estate; and if, during such marriage, such widow shall die, such real estate shall go to her children by the marriage in virtue of which such real estate came to her, if any there be: *Provided, however,* That such widow and her living husband may alienate such real estate, if her children by the marriage in virtue of which such real estate came to her shall all be of the age of tyenty-one years and join in such conveyance: *And provided, further,* That in case there be no child or children or their descendants by the marriage in virtue of which such real estate came to such widow, then, in such case, such widow may, during such second or subsequent marriage, by her second or subsequent husband joining in the conveyance thereof, alienate such real estate in fee simple.

175. **What to husband, from wife:** SEC. 22. If a wife die testate or intestate leaving a widower, one-third of her real estate shall descend to him, subject, however, to its proportion of the debts of the wife contracted before marriage: *Provided,* If the wife shall have left a will, such widower may elect to take under the will, instead of this or any other law of descents of the state of Indiana, which election shall be made within ninety days after said will has been admitted to probate in this state and in the same manner as widows are now required to elect in such cases.

176. **When widow and one child:** SEC. 23. If a husband die intestate, leaving a widow and one child only, his real estate shall descend one-half to his widow and one-half to his child.

[In force since February 24, 1899.]

177. **When personal property goes to widow and children:** SEC. 1. That if a man die intestate, leaving a widow and child or children, not exceeding two, the personal property of such intestate shall be equally divided among the widow and children, the widow taking an equal share with one child, but if the number of children exceed two, the widow's share shall not be reduced below one-third of the whole.

178. **Childless widow, life estate:** SEC. 2. If a man die intestate leaving surviving a second or other subsequent wife without children by him, but leaving a child or children of their descendants alive, by a previous wife, such surviving, childless, second or other subsequent wife, shall take only a life estate in one-third of the lands of her deceased husband, and the fee thereof shall at the death of such husband vest at once in such child or children, or the descendants of such as may be dead, subject only to the life estate of such widow.

179. **Conveyance; children estopped:** SEC. 3. In all cases where, during the life of the second or subsequent childless wife, and after the death of the husband, the children of the latter by former wife have executed or attempted to execute conveyances in fee, to all or any part of the lands affected by the life estate and have received payment therefor, or where all or any part of such lands have been conveyed for a valuable consideration by the guardians of any such children, such conveyances shall, at the death of such second or subsequent childless wife, be held to convey the interest of such children in such lands that would descend to them through such second or subsequent childless wife, and shall estop such children of their heirs from hereafter claiming such interest.

180. **Conveyance by wife and children; estoppel:** SEC. 4. In all cases where, after the death of such husband, the second or subsequent childless wife and the children of the decedent by a former wife, or their guardians, have attempted to dispose of the life-estate or any interest in the whole or certain parts of the lands of said decedent by conveyances one to the other or to other persons, such conveyances shall be held to be valid and shall estop all the parties or their heirs from hereafter claiming any interest so conveyed: *Provided*, That this act shall not in any way affect any suit or suits now pending in any of the courts of the state or the rights of any parties thereto.

181. **When act applies:** SEC. 5. The provisions of this act shall not apply in any case where the second or subsequent childless wife has died and the estate become vested in their heirs of the the deceased husband.

[In force since February 25, 1907.]

182. **Childless second wife, conveyance by children:** SEC. 1. That in all cases where heretofore a man has died intestate leaving surviving him a second or other subsequent wife without children by him, and leaving a child or children of their descendants alive by a previous wife, and such surviving childless, second, or other subsequent wife, shall have taken an interest in the real estate of her said husband, under the laws of descent of this state in force prior to the 24th day of February, 1899, and where during the life of such second or subsequent childless wife and after the death of the husband, the children of the latter by a former wife or wives or the guardians of such children have attempted to execute conveyances in fee to all or any part of the lands affected by an interest of such wife, such conveyances shall be held to convey the interest of such children in such lands that would descend to them through such second or subsequent childless wife, and shall estop such children or their heirs from hereafter claiming such interest.

183. **Former conveyances valid:** SEC. 2. That [in] all cases where after the death of such husband, the second or subsequent childless wife and the children of such husband by a former wife or wives or their guardian have attempted to dispose of such estate or any interest in the whole or any part of the lands of such husband by conveyance one to the other, or to other persons, such conveyances shall be held to be valid, and shall estop all the parties or their heirs from hereafter claiming any interest so conveyed: *Provided*, That this act shall not affect pending litigations.

[In force since June 3, 1891.]

184. **Widow's interest in personal estate:** SEC. 1. If a man die testate leaving a widow, one-third of his personal estate shall descend to said widow, subject, however, to its proportion of the debts of said decedent: *Provided, however*, That nothing in this act shall be construed to reduce the interest which the law now gives a widow in the estate of a deceased husband: *And provided, further*, That such widow may elect to take under the will of said decedent instead of this or any other law of descent of this state, which election shall be made within ninety days after said will has been admitted to probate in this state, and in the same manner as widows are now required by law to elect.

[In force since July 24, 1853.]

185. **Wife's personal property:** SEC. 5. The personal property of the wife held by her at the time of her marriage, or acquired during coverture by descent, devise, gift, or in any other manner, shall remain her own property to the same extent and under the same rules as her real estate so remains, and on the death of the husband before the wife such personal property shall go to the wife, and on the death

of the wife before the husband shall be distributed in the same manner as her real estate descends and is apportioned under the same circumstances: *Provided,* If the wife shall have left a will her surviving husband shall take under the will of his late wife unless he shall make his election whether he will take the lands so devised or the provisions so made, or whether he will retain the right to one-third of the land of his late wife, but he shall not be entitled to both unless it plainly appear by the will to have been the intention of the testatrix that he should have such lands or pecuniary or other provision thus devised or bequeathed in addition to his rights in the lands of his wife. Such election shall be in writing, signed by such husband and acknowledged before some officer authorized to take the acknowledgment of deeds, and shall be made within ninety days after said will has been admitted to probate in this state and be filed and recorded in the office of the clerk of the circuit court in which such will is probated and recorded by such clerk in the record of wills, reference being made from such record to the book and page in which the will is recorded and from the record of the will to the book and page in which such election is recorded.

[Act of May 6, 1853, Continued.]

186. **When from husband or wife to survivor and parents:** SEC. 25. If a husband or wife die intestate, leaving no child, but leaving a father and mother, or either of them, then his or her property, real and personal, shal descend three-fourths to the widow or widower, and one-fourth to the father and mother jointly, or to the survivor of them: *Provided,* That if the whole amount of property, real and personal, do not exceed one thousand dollars, the whole shall go to such widow or widower.

187. **When all to husband or wife:** SEC. 26. If a husband or wife die intestate, leaving no child and no father or mother, the whole of his or her property, real and personal, shall go to the survivor.

188. **Widow's rights in real estate:** SEC. 27. A surviving wife is entitled, except as in section seventeen [§ 2483] excepted, to one-third of all the real estate of which her husband may have been seized in fee-simple at any time during the marriage, and in the conveyance of which she may not have joined, in due form of law, and also of all lands in which her husband had an equitable interest at the time of his death: *Provided,* That if the husband shall have left a will, the wife may elect to take under the will instead of this or the foregoing provisions.

189. **Dwelling-house, use of for a year:** SEC. 28. A surviving wife and minor children shall, in all cases, be allowed to remain in the ordinary dwelling-house of the family, and to occupy the same and the messuage thereunto appertaining, and fields adjacent, if any, not exceeding forty acres, free of rent, for one year from the death of her husband.

190. **Widow's rights in equitable titles:** SEC. 29. If the husband shall have made a contract for lands, and, at the time of his decease, the consideration in whole or in part shall not have been paid, but after his death the same shall be paid out of the proceeds of his estate, his widow shall have one-third of said lands in the same manner as if the legal estate had vested in the husband during the coverture.

191. **Widow's rights; when equitable title is sold:** SEC. 30. If the husband shall have made a contract, subsisting at the time of his death, for real estate, and paid only part of the consideration, and said real estate shall be sold after his death under any decree, or by virtue of any power or devise in the will of the husband, the widow shall be entitled to her third of such real estate, in proportion to the amount paid under said contract by the said husband.

192. **Widow's rights, in case of mortgage for purchase money:** SEC. 31. Where a husband shall purchase lands during marriage, and shall, at the time of purchase, mortgage said lands to secure the whole or part of the consideration therefor, his widow, though she may not have united in said mortgage, shall not be entitled to her third of such lands as against the mortgagee or persons claiming under him; but she shall be entitled to the same as against all other persons.

193. **Adulterous wife:** SEC. 32. If a wife shall have left her husband, and shall be living, at the time of his death, in adultery, she shall take no part of the estate of her husband.

194. **Adulterous husband:** SEC. 33. If a husband shall have left his wife, and shall be living, at the time of her death, in adultery, he shall take no part of her estate.

195. **Husband abandoning, and not providing for wife:** SEC. 34. If a husband shall abandon his wife without just cause, failing to make suitable provision for her, or for his children, if any, by her, he shall take no part of her estate.

196. **Wife's rights, in case of conveyances and judicial sales:** SEC. 35. No act or conveyance, performed or executed by the husband without the assent of his wife, evidenced by her acknowledgment thereof in the manner required by law; nor any sale, disposition, transfer or incumbrance of the husband's property, by virtue of any decree, execution or mortgage to which she shall not be a party (except as provided otherwise in this act), shall prejudice or extinguish the right of the wife to her third of his lands or to her jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

197. **Wife barred by ante-nuptial provision:** SEC. 36. Whenever an estate in lands shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such intended wife, for the purpose of creating a jointure for such intended wife; or whenever, for the same purpose, a pecuniary provision shall be made for the benefit of the intended wife — the same shall be a bar to

the right or claim of such wife in lands of her husband: *Provided,* The intended wife, at the time of the creation of such jointure, signified, in writing, indorsed upon or attached to the deed creating said jointure, her assent to receive the same in lieu of all right or claim of such wife in the lands of the husband.

198. **Husband barred by ante-nuptial provision:** SEC. 37. Whenever an estate in lands or other property shall be conveyed to a woman and her intended husband or to such intended husband alone, as an equivalent for or in lieu of all right or claim of the said intended husband in the lands of his future wife, the same shall be a bar to such right or claim: *Provided,* The intended husband, at the time of the execution of such conveyance, signified, in writing indorsed upon or attached to said conveyance, his assent to receive the same in lieu of all right or claim of such husband in the lands of the wife.

199. **Wife's jointure:** SEC. 38. The jointure of the wife, if consisting of real estate, must not be less than a freehold estate in lands, to take effect, in possession or profit, immediately on the death of the husband.

200. **Infant wife's jointure:** SEC. 39. The assent of the wife to such jointure, if she be an infant, shall not be valid, unless her father (or if there be no father alive, then the mother; or if there be no mother, then the guardian) shall join therein.

201. **Widow's election as to jointure:** SEC. 40. If before her coverture, but without her assent, or if after her coverture, any such jointure or pecuniary provision shall be assured or given for her jointure, in lieu of her right to one-third of the lands of her husband, she shall make her election, within one year after the death of her husband, whether she will take such jointure or pecuniary provision, or whether she will retain her right to one-third of the lands of her husband; but she shall not be entitled to both.

202. **Widow's election as to devise:** SEC. 41. If lands be devised to a woman, or a pecuniary or other provision be made for her by the will of her late husband, in lieu of her right to lands of her husband, she shall take under the will of her late husband, unless she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will retain the right to one-third of the land of her late husband; but she shall not be entitled to both unless it plainly appear by the will to have been the intention of the testator that she should have such lands, or pecuniary or other provision thus devised or bequeathed in addition to her rights in the lands of her husband. Such election shall be in writing, signed by such woman and acknowledged before some officer authorized to take the acknowledgment of deeds, and shall be made within one year after said will has been admitted to probate in this state, and be filed and recorded in the office of the clerk of the circuit court in which such will is probated and

recorded by such clerk in the record of wills, reference being made from such record to the book and page in which the will is recorded and from the record of the will to the book and page in which such election is recorded.

[In force since March 4, 1905.]

203. **Insane widow, election, guardian's duty:** SEC. 1. That where lands and personal property, or either, be devised or bequeathed, to a woman, or a pecuniary or other provision be made for her by the will of her late husband, in lieu of her right to lands and personal property, or either, of her husband, and such woman shall have been found to be insane and under guardianship, then the guardian of such insane woman shall within sixty days after the probate of the will file his petition in the circuit court to which he reports praying the court to determine and order whether he, as such guardian, shall elect to take for such widow the provision made for her in said will or to take the provision made for her by law, and the court shall hear evidence and determine whether it is for the best interest of such widow to take under said will or under the law, and shall so order said guardian, and said guardian shall thereupon file his written election for said widow pursuant to such order. Such election shall be in writing, signed by such guardian and acknowledged before some officer authorized to take the acknowledgment of deeds, and shall be made immediately after the determination and order of the court as aforesaid and be filed and recorded in the office of the clerk of the circuit court in which such will is probated and recorded by such clerk in the record of wills, reference being made from such record to the book and page in which the will is recorded and from the record of the will to the book and page in which such election is recorded.

[In force since April 10, 1907.]

204. **Wife, devise, election:** SEC. 1. That whenever any personal or real property be bequeathed to any wife, or a pecuniary or other provision be made for her, in the will of her late husband, such wife shall take under such will of her late husband, and she shall receive nothing from her husband's estate by reason of any law of descent of the state of Indiana, unless otherwise expressly provided in said will, unless she shall make her election to retain the rights in her husband's estate given to her under the laws of the state of Indiana, which election shall be made in the manner hereinafter provided.

205. **Husband, devise, election:** SEC. 2. That whenever any personal or real property be bequeathed or devised to any husband, or a pecuniary or other provision be made for him in the will of his late wife, such husband shall take under such will of his late wife, and he shall receive nothing from his wife's estate by reason of any law of descent of the state of Indiana, unless otherwise expressly provided in

said will, unless he shall make his election to retain the rights in his wife's estate given to him under the laws of the state of Indiana, which election shall be made in the manner hereinafter provided.

206. **Election; how made:** SEC. 3. Any surviving husband or wife, desiring to renounce the provisions made for him or her in any such will, shall file his or her election in writing, duly signed and acknowledged before some officer authorized to take acknowledgments of deeds, and such election shall be made and filed within one year after such will has been admitted to probate in this state. Said elections shall be filed and recorded in the office of the clerk of the circuit court in which such will is probated, and the same shall be recorded by such clerk in the record of wills, reference being made from such record to the book and page in which such will is recorded, and from the record of such will to the book and page where such election is recorded. In such election such husband or wife shall state that he or she renounces the provisions made for him or her in such will and that he or she elects to take the interest in such estate that is given to him or her under the laws of descent of the state of Indiana. After making such election, such husband or wife shall receive none of the provisions made for him or her in such will.

207. **Insanity; election by guardian:** SEC. 4. If at the time of the probate of any such will, such surviving husband or wife shall be insane, or if any such surviving husband or wife shall become insane within the year in which such election may be made and without making such election, it shall be the duty of the guardian of such insane husband or wife to file a petition in the circuit court of the county where such will is probated, praying for the advice of the court, to determine whether he as such guardian shall on behalf of his ward take under such will or renounce the provisions of the same and take under the laws of descent of the state of Indiana. Such petition shall be filed within one year after such will is admitted to probate in this state. Upon such petition being filed, the circuit court shall hear evidence and determine whether it is for the best interest of such insane husband or wife to take under said will or under said laws of descent, and such court shall enter an order and judgment accordingly. If such court shall determine that it would be to the best interest of such insane husband or wife to renounce such will and take under said laws, said guardian shall within ten days after the date of such order, file his election on behalf of his ward to take under the laws of the state of Indiana. Such election shall be in the same form and filed in the same manner as required by section three (3) of this act.

208. **Proviso:** SEC. 5. *Provided*, That nothing here contained shall apply in any case where the decedent has died prior to the taking effect of this act, and his or her will probated, but in all such

cases the right of the survivor, whether husband or wife, shall be governed by existing laws.

[Act of May 6, 1853, Continued.]

209. **Revivor of rights by loss of jointure:** SEC. 42. If a woman be lawfully evicted of lands assigned to her as jointure, or be deprived of provision made for her as jointure; or if a man be lawfully evicted of lands or deprived of other property conveyed to him in nature of a jointure, — which assignment, provision, or conveyance had barred her or his right in the lands of her husband or of his wife, as the case may be, then her or his right to a third of said lands shall revive and be in force.

210. **Alienage of wife:** SEC. 43. The alienage of any woman shall not bar her right to one-third of her husband's lands, if her husband was a citizen of the United States, or if, being an alien, he had complied with the laws of this state to entitle him to hold lands.

[In force since August 24, 1875.]

211. **Wife's right upon judicial sales:** SEC. 1. In all cases of judicial sales of real property in which any married woman has an inchoate interest by virtue of her marriage, where the inchoate interest is not directed by the judgment to be sold or barred by virtue of such sale, such interest shall become absolute and vest in the wife in the same manner and to the same extent as such inchoate interest of a married woman now becomes absolute upon the death of the husband, whenever, by virtue of said sale, the legal title of the husband in and to such real property shall become absolute and vested in the purchaser thereof, his heirs or assigns, subject to the provisions of this act, and not otherwise. When such inchoate right shall become vested under the provisions of this act, such wife shall have the right to the immediate possession thereof; and may have partition, upon agreement with the purchaser, his heirs or assigns, or upon demand, without the payment of rent, have the same set off to her.

212. **When not applicable:** SEC. 2. The provisions of this act shall not apply to sales of real estate upon judgments rendered prior to the taking effect of this act; nor to any sale of real property of the value of twenty thousand dollars and over; nor to the sale of such real property of the aggregate value of twenty thousand dollars and over — except to so much of such real property as shall not exceed in value the sum of twenty thousand dollars.

213. **Who inherits from wife:** SEC. 3. If any married woman shall die, holding real property vested in her by the provisions of this act, during the existence of the marriage in virtue of which she received the same, the whole of such real property shall descend to her surviving husband; and if any woman shall marry a second or any subsequent time, holding real property vested in her by the provisions of

this act, such woman may not, during such second or subsequent marriage, either with or without the assent of her husband, alienate such real estate; and if, during such marriage, such wife shall die, such real estate shall descend to her children by the marriage in virtue of which such real estate came to her, if any there be.

214. **Price on execution sale:** SEC. 4. No real property in which any married woman holds such inchoate interest as is provided for in this act, liable to be sold with benefit of appraisement laws of the state, shall be sold on any execution or order of sale issued out of any court for less than four-ninths of the appraised cash value thereof, exclusive of liens and incumbrances.

CHAPTER 8.

Drainage.

(Ditch Laws.)

I. Construction of drains.
II. Repair and cleaning of drains.
III. Flood gates.
IV. Miscellaneous.

I. Construction of Drains.

[Act approved April 10, 1907.]
(With amendments passed in 1909.)

215. **Drain, commissioner, term, bond, pay:** SEC. 1. That it shall be the duty of the board of commissioners of each county in this state, at their first regular session in January after the taking effect of this act, to appoint a drainage commissioner. who shall be a person of inttlligence and good judgment, and a reputable citizen of the county, who shall hold his office for two years and until his successor shall be appointed and qualified, unless sooner removed by the board of commissioners. The board of commissioners may remove such drainage commissioner from office at any time. and whenever there shall be a vacancy in such office the board of commissioners may fill the same by appointment at any regular session of said board. Every such drainage commissioner shall. before entering upon the discharge of his duties. take and subscribe an oath of office, and shall give bond payable to the state of Indiana. with sureties and in a penalty of not less than five thousand dollars, to be filed with and approved by the auditor of such county, conditioned for the proper and faithful discharge of his duties, and that he will account according to law for all money that shall come to his hands as such commissioner. The auditor shall thereupon issue to such commissioner a certified copy of the order of his appointment. The county surveyor shall be *ex officio* a drainage commissioner. and shall give a bond as above required of the drainage commissioner in addition to his ordinary official bond. Such drainage commissioner provided for herein and the third commissioner appointed by the court shall each receive as compensation for all services provided for in this act three ($3.00) dollars per day. and the surveyor shall receive four ($4.00) dollars per day. each of them being paid for the time he is actually engaged in the prosecution of the duties required herein.

216. **When Petition to be made to court, contents, bond:** SEC. 2. Whenever any owner or owners of any separate and distinct tract or tracts of land lying outside the corporate limits of any city or town in this state, or whenever a township trustee shall desire to provide for the drainage of a public highway or the grounds of a public school. or

whenever the common council of any incorporated city or board of trustees of any town shall find it necessary for the successful drainage of any such lands, public highway, grounds of a public school, incorporated city or town shall desire to drain the same and the drainage thereof can not be accomplished in the best and cheapest manner without affecting the lands of others, such owner or owners, township trustee, common council or board of trustees, as the case may be, may apply for such drainage by petition filed in duplicate to the circuit court or superior court of the county in which the lands of the petitioner or petitioners are situated. The petition shall describe in tracts of forty acres according to fractions of government surveys, or less tracts when they exist, and in Clark's grant and the French grant, and all pre-emptions of Indian reservation in such tracts [as] are owned, the lands of others, which it is believed will be affected by the proposed drainage, and give the names of the owners thereof, if known, or upon diligent inquiry can be ascertained, and if unknown shall so state. If the name of the owner is unknown and can not be ascertained on diligent inquiry it shall be sufficient to describe such land as belonging to the person or party who appears to be the owner by the last tax duplicate or record of transfers kept by the auditor of the county in which such land is situated. If any of the lands to be benefited lie within the corporate limits of any city or town in this state, the same shall be described by lots and the numbers thereof as shown by the plat books of such city or town. Such petition shall be sufficient to give the court jurisdiction over all lands described therein and power to fix a lien thereon, if they are described as belonging to the person who appears to be the owner according to the last tax duplicate or record of transfer kept by the auditor of the county where the same is situated. If the right of way of any railroad company is believed to be affected, it shall be sufficient to describe it as the right of way of such railroad company, naming it, through section, township and range, giving the numbers of the same. It shall also state that in the opinion of the petitioners that the public health will be improved, or that one or more public highways of the county, or street or streets of, or within the corporate limits of a city or town, will be benefited by the proposed drainage, or that the proposed work will be of public utility; and it shall state generally the method by which it is believed such drainage can be accomplished in the cheapest and best manner, and the belief of the petitioners that the costs, damages and expenses of such drainage will be less than the benefits which will result to the owners of the lands likely to be benefited thereby. And all the assessments made upon the owners of such tracts, parcels and lots of lands as may be benefited by such drainage shall be in such equitable proportion as such drainage commissioners may deem just: *Provided, also,* That [at] the time of filing of said petition said petitioner or petitioners shall give a bond with good and sufficient freehold sureties, payable to the state, to be approved

by the court, conditioned to pay all expenses in the event the court shall fail to establish said proposed drain: *Provided,* That when any such proposed drain will run into two or more counties, or on the county lines dividing two counties, the circuit court or the superior court of the county having the greatest length of said proposed ditch shall have jurisdiction of said work: *Provided,* That when said ditch, drain or levee extends into more than one county, one of the drainage commissioners herein provided for shall be appointed by the court from one of such other counties.

217. Docketing of petition, notice, hearing, report, procedure: SEC. 3. Whenever the petitioner or petitioners shall file their petition in the celrk's office of the circuit or superior court, he or they shall fix or note thereon the day set for the docketing thereof and shall give the owner or occupant of each tract of land described in said petition, who is a resident of the county or counties in which said land is situated, and to the trustee of the township, mayor of the city, president of the board of trustees of every town or city, and the agent of any railroad company or corporation or company, public or private, to be affected by the proposed work, notice thereof by serving upon such owner or occupant, persons or party, a written or printed notice setting forth the route of such drain as described in the petition, the fact of the filing and pendency of such petition, and when the same shall be docketed, which notice may be served by the petitioner or petitioners, or either of them, or by any person for them, by delivering a copy to the person to be notified, or by leaving such copy at his last and usual place of residence and proof thereof made by the affidavit of the person making such service. The service of such notice upon the station agent of any railroad company in the county in which the proceedings are instituted shall be sufficient notice to such railroad company, and in case there be no agent of such railroad in the county, such company shall be notified in the same manner as other non-resident land owners, and as to all owners of lands to be affected by such proposed drainage, who at the time of filing the petition are nonresidents of the county or counties in which the lands to be affected are situated; notice of the filing, pendency, and the time fixed for docketing of said petition shall be given by posting up written or printed notices thereof at three public places in each township where the lands described in said petition are situated, and near the line of the proposed work, and one at the door of the court house in each of the counties in which said lands are situated, and by sending through the United States mail a copy of such notice to nonresidents, if their postoffice addresses can be ascertained by inquiry at the office of the county treasurer of the county, which notices shall be similar in form to those required to be served on resident owners; and by causing to be published for two times in each of the two leading newspapers representing the two political parties casting the largest number of votes at the last preceding state or

general election, which said notice shall contain only the names of land-owners or owners who are non-residents of the county or whose residence can not be ascertained, but in all other respects shall be similar in form to those required to be served on resident land-owners; and if it appears to the court that notice has been given of the filing of said petition by service of notice upon resident land-owners, and by posting and publication of notices as above provided not less than twenty days before the day set as the day for docketing the same, the court shall order the same placed on the docket of said court as an action pending therein. Any person named in such petition as the owner of lands shall have ten days, exclusive of Sunday, and the day for docketing such action after such docketing, to file with said court any demurrer, remonstrance or objection he may have to the form of said petition, or as to why said drainage commissioners, or either of them, on account of their interest in said work, or kinship to any person whose lands are affected thereby, should not act in the matter. After said ten days have elapsed, the court shall consider such remonstrance, demurrer or objection, if any, and, if it finds said petition defective, shall dismiss the same at the cost of the petitioner or petitioners, unless the same shall be amended within a time fixed by the court: *Provided,* That if within twenty (20) days, exclusive of Sundays, from the day set for the docketing of such petition, two-thirds in number of the land-owners named as such in such petition, or who may be affected by any assessment or damages, resident in the county or counties where the lands affected are situated, shall remonstrate in writing against the construction of such drain or ditch, such petition shall be dismissed at the cost of the petitioners: *Provided,* That in cases pending at the time of taking effect of this act where a two-thirds remonstrance has not been filed, such remonstrance may be filed to the report of the drainage commissioners, except in cases pending on petition filed under the act of the general assembly of the state of Indiana entitled "an act concerning drainage," approved March 6th, 1905. If no remonstrance shall be filed, and the court deems said petition sufficient, such court shall make an order referring the same to the drainage commissioners above provided for: *Provided,* That when such order shall be made referring such petition to the drainage commissioners, it shall be the duty of the court to appoint a third drainage commissioner to act therein, who shall be a reputable freeholder, not related to any land-owner affected, disinterested, and a man of intelligence and good judgment, and a resident of some township through or into which such ditch or drain is proposed to be constructed, who shall take an oath that he will faithfully and honestly perform his duties, before entering thereon; and it shall be the duty of the petitioners, at their own cost, to give notice to such person of such appointment. All objections to the petition or the acting of any drainage commissioner not made within said ten days shall be deemed waived. In the order of referring said matter

to said commissioners, the court shall fix a time and place for the meeting of said commissioners, and a time when they shall report. The clerk shall deliver to them a duplicate copy of such petition and of such order, and they shall meet accordingly. They shall make personal inspection of the lands described in the petition, and of all other lands likely to be affected by the proposed work; and consider: *First*, whether the drainage proposed is practicable; *second*, whether, when accomplished, it will improve the public health or benefit any public highway in the county or street of a town or city, or be of public utility; and *third*, whether the costs, damages and expenses of effecting the drainage will be less than the benefits to the owners of the lands likely to be benefited by the proposed drainage. If they find any of these inquiries in the negative, they shall make report of such finding to the court, and thereupon the petition shall be dismissed at the cost of the petitioners. But if they find otherwise, they shall proceed and definitely determine the best and cheapest method of drainage, the termini and route, location and character of the proposed work, and fix the same by metes and bounds, courses and distance and description, including gardes and bench marks, including all necessary arms, estimate the cost thereof, divide the drain or ditch into sections not more than one hundred feet in length, and compute and set out the number of cubic yards of excavation in each section, assess the benefits or damages as the case may be to each separate tract of land to be affected thereby, and to easements held by railway or other corporations, as well as to cities, towns, or other public or private corporations, including any land, rights, easements or water power, injuriously or beneficially affected and to make report to the court, under oath, as directed: *Provided, also*, That when any ditch, drain, or levee, runs into another county than the one where such proceedings therefor as aforesaid are instituted, no bridge, culvert, or road in such other county shall be destroyed, injured or interfered with, unless the damage to be occasioned thereby to such bridge, culvert or road has been considered, estimated and assessed by the said drainage commission, and the payment of such damages to such county provided for by assessing the same pro rata as other damages are assessed. The drainage commissioners, in locating the line or lines of work of drainage, may vary from the line described in the petition as they deem best and may fix the beginning or outlet so as to secure the best results; they may run the line so as to avoid all injury possible to lands, easements or public grounds and so as to benefit public highways, streets or alleys, by using the earth excavated for road beds, or in any other way they deem best: *Provided*, That in no case shall they change or construct the work as to sacrifice the best interests of such work or drainage. They may determine that the method of drainage shall be by removing obstructions from a natural or artificial watercourse; or diverting such water-course from its channel, by deepening, widening or changing the channel of such watercourse; by con-

structing an artificial channel, with or without arms or branches; by providing that said work may be the tiling of an already existing public open drain or tiling an already existing public open drain and constructing as a part of said work a new drain; by providing that such drain shall be open or tiled and covered, or partly opened and partly tiled and dug by shovel, dredge or otherwise; by constructing levees or dykes; or by any or all of such methods combined: *Provided,* That all timber, shrubs and trees standing within twenty-five feet of any tiled part of any public drain, or of any public tile drain shall be removed by the owner of the lands on which such timber, shrubs and trees are located: *Provided,* That such drain shall not be located so close to any lake covering ten acres or more of ground as to lower the water level of the lake, and shall at no point be nearer than forty rods to the high water mark of such lake. "Excepting only where such drains empty into such lakes." Any two of such commissioners may act without the presence or concurrence of the third. The county surveyor shall be the engineer, if entirely disinterested and competent; otherwise the court shall appoint a disinterested and competent engineer who shall make the necessary surveys, and shall preserve in his office and shall turn over to his successor legible copies of all notes made by him in the discharge of his duties: *Provided,* That in case the county surveyor shall not be a civil engineer or is incompetent, or shall fail to give the bond required, the court may designate some competent civil engineer to act instead of the surveyor, who shall, before entering upon his duties, take and subscribe an oath of office, and give bond as herein required of the county surveyor: *And, provided further,* That in all cases where lands are named in said report as affected by such proposed work, which are not named in the petition, the court shall fix a time for hearing the report, and it shall be the duty of the petitioners, at their own cost, to give ten days' notice to the owners of such lands of the filing of such report in the same manner as is herein required to be given of the filing and docketing of the petition, which notice shall state the time for hearing such report, and in such case the court shall continue the hearing of said entire report until such notice has been given as last above provided. The same proceedings shall be had in regard to such report as if all the lands mentioned therein, and the owners thereof, had been named in the original notice of the filing of the petition, and in locating and fixing the size and dimension of drains and ditches, they shall provide ample means for the drainage or protection from overflow of the land to be affected, having in view future contingencies as well as the present. The drainage commissioners shall include in their report an itemized account of the costs and expenses incurred in making the survey and assessments, and the completing and filing of their report.

218. Remonstrance may be made; trial upon same; order; assessments: SEC 4. Upon the making of such report to the court, ten

days, exclusive of the day of filing such report and Sundays, shall be allowed to any owner of lands affected by the work proposed and reported benefited or damaged, to remonstrate against the report; the remonstrance shall be verified by the owner of the land or by some person on his or her behalf, and may be for any of the following causes:

First. That the report of the commissioners is not according to law.

Second. By any person or persons whose lands are assessed as benefited, that the damages assessed to any specified tract of land are exorbitant.

Third. By any person or persons whose lands are assessed as benefited, that his or their specified lands are assessed too much as compared with other lands assessed as benefited or damaged, specifying the same.

Fourth. By any person or persons whose lands are assessed as benefited, that other tracts, specifying the same, are assessed too low according to the benefits to be received.

Fifth. By any person whose lands are assessed as benefited, that the same will not be affected, nor benefited to the extent of the assessment by the proposed work if accomplished.

Sixth. By any person whose lands are assessed as damaged, that the damages assessed are inadequate.

Seventh. By any person whose lands are reported as benefited, that his lands will be damaged by the construction of the proposed work.

Eighth. That it will not be practicable to accomplish the proposed drainage without an expense exceeding the aggregate benefits.

Ninth. That the proposed work will neither improve the public health nor benefit any public highway of the county, nor be of public utility.

Tenth. That the proposed work as decided upon and reported by the commissioners, will not be sufficient to properly drain the land to be affected, and the filing of such remonstrance in the office of the clerk of such circuit court shall be a sufficient filing thereof under this act whether in term time or vacation.

If, upon hearing, the court shall decide that the first of the above causes of remonstrance is true, the court may direct the commissioners to amend and perfect their report, or the court may in its discretion set aside said report, refer the matter anew back to said commissioners for a new report. In making such order for a new report, the court shall fix the time and place of their meeting, and when they shall report; and when said new report is made and filed, any person whose lands are reported as affected may remonstrate within the same time therefrom and for the same causes as is hereby allowed to remonstrate against the first report, but such second remonstrance shall only be as to new matters contained in the second, or amended report. All questions of facts arising on the petition, report or remonstrance, shall be tried by the court without a jury. If the remonstrance or remonstrances shall be sustained by the court on the second, third, fourth, fifth, sixth or seventh causes

of remonstrance, the court may modify and equalize the assessments as justice may require by diminishing the assessments on some tracts and increasing it on others, or by giving or withholding damages, and for such purposes all persons whose lands are reported as affected, or are stated in the petition as affected, shall be deemed to be in court, by virtue of the notices originally given to such parties of the pendency of the petition, or by the notices subsequently given to the owners of lands which were not in the original petition, but brought in by the action of the commissioners; and if lands described in the petition as affected by the proposed work, and the commissioners have reported such lands as neither benefited nor damaged, the court may, if the facts and justice shall warrant it, make assessments against the same, and as such assessments are so changed, modified and equalized, or made, they shall stand and be adjudged valid. If the finding and judgment of the court be against the remonstrance or remonstrances on the second, third, fourth, fifth, sixth and seventh causes as above set out, the assessments made by the commissioner shall be confirmed, and the order of confirming shall be final and conclusive. If the finding and judgment of the court be in support of the remonstrance or remonstrances on the eighth, ninth or tenth causes of remonstrance, the proceedings shall be dismissed, at the cost of the petitioners, including the costs and per diem of the commissioners, reasonable fees for the services of petitioners' attorneys, all court costs and the costs of the trial of the remonstrances. If there be no remonstrance, or if the finding and judgment shall be in all respects against the remonstrance for the first, eighth, ninth and tenth causes of the remonstrance, or if for the second, third, fourth, fifth, sixth or seventh causes of remonstrance, the court can and does equalize the same as above provided, the court shall make an order declaring the proposed work established, and approving assessments as made by the commissioners, or as equalized and modified as above provided for, and shall assign the same to one of the three commissioners above provided for, for construction, or the court may assign it for construction to any disinterested freeholder of the county, who shall, before entering upon his duties, take and subscribe an oath of office and give bond, payable to the state of Indiana, in such sum as the court may require, conditioned that he will honestly and faithfully perform his duties and account for all moneys that may come into his hands. When the finding and judgment of the court is again the remonstrance for any cause, or when in his, her or their favor on the second, third, fourth, fifth, sixth or seventh causes, and the assessments or benefits or damages to the person remonstrating is not changed ten per cent. in favor of the remonstrant, he shall pay the costs occasioned by his remonstrance, and in all other cases the costs shall be paid by the petitioner. In all cases of appeal tried in the circuit court, and in all trials in that court, provided for in this

act, the trial shall be by the court, without a jury. There shall be no change of venue from the county. The order of the court approving and confirming the assessments, and declaring the proposed work of drainage established shall be final and conclusive, unless an appeal therefrom to the supreme court be taken and an appeal bond filed within thirty days, to the approval of the court or the clerk in vacation. A transcript of the record on such appeal and all bills of exceptions shall be filed in the office of the clerk of the supreme court within sixty days after the filing of the appeal bond. All parties shall take notice of, and be bound by such appeal, and all proceedings in the matter of such drainage shall be stayed until its determination.

219. **Construction of drain; collecting assessments for same:** SEC. 5. The commissioner or other person charged with the execution of the work, as above provided for, shall proceed to have the same constructed. He shall pay the costs not otherwise adjudged and all expenses incident to the construction of such work, including reasonable attorney's fees of the petitioner in the preparation and presentation of the petition, and the prosecution of the same and for such services as may be necessary in any stage of the proceedings not exceeding four per cent. of the assessed benefits as approved by the court in all drains in which the assessed benefits are greater than one thousand dollars ($1,000), the costs of giving notice, and shall pay such other costs and expenses as the court shall deem proper out of the funds collected fro mthe assessments made and confirmed as aforesaid: *Provided*, That no claim for costs, expenses or other wise, except on contract for constructing the work, shall be paid until it is presented to the court, and by the court allowed. He shall pay into the county treasury, as soon as he may collect from the assessments sufficient for the purpose, whatever that sum shall have been by the provisions of this law paid out of the county treasury on account of such work. He shall also pay all damages that have been assessed and allowed by the court and the cost of constructing the work. He shall, for the purpose of raising funds for the above mentioned purposes, collect pro rata of the assessments of benefits reported by the drainage commissioners, and as adjusted by the court, such sums of money as may be necessary therefor, not exceeding the whole benefits so adjudged upon any one tract, and not to exceed its pro rata share where the total amount of all assessments is not required for such payments, and require the same to be paid in installments not exceeding ten per cent. per month, at such times as he shall fix after thirty days' notice theerof, by one publication in a newspaper published in the county in which such lands are located, which notice shall state when and where all such installments shall be payable. He shall divide such work into stations not exceeding one hundred feet in length, and provide himself with and furnish on demand to any person interested or to any one proposing to bid on such work, the computation of the number of cubic yards of excavation in

each station as is above provided for; and shall, after giving notice for two weeks in a newspaper of general circulation in each county where lands assessed as benefited are situated, proceed to let such work by contract to the lowest and best bidder. He may let the work as a whole, or subdivide the same into two or more sections and let the same in separate contracts, as will in his best judgment the most speedily and economically accomplish its completion: *Provided*, That any person, against whose lands assessments of benefits have been made, shall have the preference, at the same rate, over any other contractor. Such contractor shall, within the time which shall be reasonable and, which, for good cause, may be extended under the direction of the person charged with the construction of such work, construct such part of such work so set off to him: *Provided*, That should any such person fail or refuse to construct such portion of said work so contracted to him within the time according to the specifications, and should it become manifest, before the expiration of such time, that such a person would not complete the same, or would be unable to complete the same within the time limited, or in the manner specified, then the person charged with the construction of such work may annul such contract and let the same to the best bidder, first giving ten days' notice by the publication in a newspaper published in the county in which that part of such work lies: *Provided*, Such person so in default shall not again become a bidder for such portion of such work, but such person shall be allowed on his contract a fair price for the work he has performed up to the time his contract is so annulled, such price to be determined by the court establishing said work. If such person to whom an allotment of work is contracted, be the owner of lands assessed for benefits, and shall perform his work within the time specified, the price thereof shall be applied on his assessment, and the same shall not be collected of him as above provided: *Provided, further*, That any person or party who shall have successfully bid for the whole or any part of said work, shall, when the same is so set off to him, enter into a contract with the person in charge to perform such part of such work and give bond and surety, and in a proper penalty, for the performance of his contract, and that he will pay all damages occasioned by his nonfulfillment of his said contract, which may be recovered in any court of competent jurisdiction. And in case any person or party whose lands are assessed for the construction of such ditch shall be damaged by reason of such default and failure of such contractor to complete the work within the time limited, such contractor so in default shall be liable on his bond to the person or party so damaged to the full amount of such damages, which may be recovered in any court of competent jurisdiction in a suit or an action on such bond by the state of Indiana on the relation of the person or party damaged for the use of such person or party injured or damaged, and the amount recovered shall be paid to the party injured, and such superintendent of construction may bring

suit on such bond in any court of competent jurisdiction to recover any increase cost, expense or damages of or to the work by reason of such failure of such contractor, and the amount recovered shall be and become a part of the funds in the hands of such superintendent, for the construction of such work, the same as assessments. He shall collect the assessments not satisfied, as herein provided for, or such part thereof as may be by him deemed necessary for the purposes herein mentioned, and apply the same as herein provided, and for the purpose of making such collections, if not paid as above required, he shall make his certificate, showing the amount of such assessments against any tract or tracts of land, the default in its payment as required, and file the same with the auditor of the county where such lands are situated, and thereupon the auditor shall place the same on the delinquent tax duplicate, and the same shall be collected as other delinquent state and county taxes are collected: *Provided,* Personal property or real estate other than that asesssed as benefited, shall not be sold therefor; *Provided,* That in all sales of real estate made by the treasurer of any county under the provisions of this act, the owner thereof, or any person having an interest therein or lien thereon, at the time of sale, shall have the right to redeem the same at any time within two years from the date of sale, by paying into the county treasury, for the benefit of the purchaser at such sale, the amount for which said land was sold, together with a penalty of fifteen per centum per annum for such time as may have elapsed from the date of sale until the time of such redemption. But in no event shall the total compensation of such surveyor and his necessary assistants, be greater than a sum equal to four (4) per cent. of the actual cost of excavation of any drain whose total cost of excavation shall exceed three thousand dollars ($3,000). Such, and any and all bills for services of such surveyor and his assistants shall be first approved and allowed by the judge of the circuit court of the county where such proceedings shall have been commenced, and shall be paid out of the fund raised for the construction of such ditch and not otherwise.

220. **Contract exceeding $5,000.00; bonds may be issued to pay; assessment on lands benefited:** SEC. 5½. In all ditches and drains heretofore established or hereafter established where the contract price for the construction of any work of drainage as provided for in this act shall exceed the sum of five thousand dollars, drainage bonds may be issued to procure funds for the payment of the costs of such construction. The drainage commission [er] in charge of said work, after he shall have let the contract or contracts for the construction, shall carefully ascertain and determine the total original cost of the construction of said ditch, and all incidental costs and expenses herein contemplated, and having so done, he shall apportion such costs and expenses to the several tracts of land assessed, in proportion to the total assessments against the respective parcels of lands benefited by the construction of said work,

which apportionment to the respective tracts or parcels of land shall not exceed the benefits assessed against the same respectively, and shall certify such assessments and apportionment to the board of county commissioners of the county or the counties in which lands are assessed for the construction of said work, and the board of commissioners shall at their next regular session determine at what time and in what number of installments they will require the same to be paid: *Provided*, That such assessments shall not extend over a greater period than ten years, and shall mature at annual intervals commencing after a period of one year. And the board shall enter an order setting forth such determination, and its approval of such assessments and apportionment; and in said order it shall fix a day certain, not less than ninety days after the date of such order, on or before which the owner or owners of any tract or parcel of land, desiring to pay in full such assessments and discharge said tracts or parcels of land from the liability of such assessment, shall have the right so to do. Thereupon the auditor shall give notice by publication in some weekly newspaper published in said county, not less than ninety days before the day named in said order for the payment of such assessments, that such assessment sheet has been prepared and placed in the hands of the county treasurer for collection, and of the time and manner in which such assessments are required to be paid; and also that all persons affected thereby, desiring to pay such assessments in order to discharge their lands from all liability to such assessment, on or before the day named in said order, may do so. Any person making such payments of such assessments against any such parcel or tract of land shall receive from the treasurer of the county a receipt showing such payment, which shall operate to discharge such tracts or parcels of land from all liability to such assessment. Such treasurer shall keep an accurate account of all moneys so paid to him, and at the close of the day named in said order for such payment of assessments, shall place all moneys so received by him in the county depository. The board of commissioners, after having deducted from the total estimated cost of such construction, including all damages awarded and other incidental expenses, as hereinbefore provided, the aggregate of such assessments so paid, shall cause bonds of said county to be issued in denominations of not less than one hundred dollars ($100.00) for the remainder of such costs and expenses; such bonds shall be numbered in consecutive order, beginning with those first maturing, and shall fall due from year to year as the assessments above provided shall suffice to pay the same; they shall bear interest at the rate of five per cent. per annum, payable semi-annually; they shall show upon their face for what purpose they are issued, and shall be payable from such assessments and not otherwise. Thereupon the auditor shall extend all such assessments then remaining unpaid upon a special duplicate, to be provided for him at the expense of the county, and to be known as the "ditch duplicate," for recording all such assessments in

said county; in so extending such assessments upon said duplicate, the auditor shall in the first instance extend the same for the full period of payment of all such assessments, as fixed by said order of the board of commissioners, and shall calculate and add to each successive installment interest at the rate of six per cent. per annum until the date fixed for the payment thereof; such assessment shall constitute a first and paramount lien upon said tracts or parcels of land respectively, and shall be collected at the same time and in the same manner that taxes are collected; and when collected shall be applied to the payment of such bonds, principal and interest, and to no other purpose whatever; and in event said assessments or one or more of them shall not be paid when due, such failure to pay shall result in the same penalties as attach upon the nonpayment of taxes as provided in cases of delinquent taxes. Upon the issuing of such bonds the auditor shall give notice by publication in some weekly newspaper published in said county that upon a day (not less than twenty days thereafter) and at an hour and place therein named, the treasurer of said county will proceed to sell said bonds to the highest and best bidder for cash; at the time and place so fixed in said notice the auditor and treasurer shall attend, and shall offer said bonds for sale to the highest and best bidder, and they shall certify the result of such sale to the board of commissioners at its next meeting: *Provided, however,* That said bonds shall not be sold for less than their face value, and neither said auditor or treasurer shall receive any fee or compensation for their services in making such sale. The proceeds of said bonds shall be paid into the treasurer's office of the county, and shall be paid out by him only for the purpose of the construction of such ditch, and the costs and expenses incident thereto, as hereinbefore provided, including the cost of giving the notice; such payments shall be made only upon the order of the commissioner in charge of the construction of said ditch, approved by the circuit court in which the proceedings are had; all costs not taxable to petitioners, remonstrators or appellants shall in the first instance be paid out of the county treasury, and shall be refunded to the county out of the first money received from the sale of such bonds; next in order all awards of damages by reason of the construction of said ditch shall be paid, and thereafter such moneys shall be paid to the contractor or contractors upon the contract price for such work, from time to time as the same shall become due under the terms of said contracts; *Provided, however,* If said bonds shall sell at a premium, the aggregate amount of such premium shall be apportioned pro rata to the several assessments against the respective parcels of land, and the amount thus apportioned to each several parcel shall operate as payment to that extent of the first maturing installment: *Provided,* That in cases extending into more than one county, the county treasurers shall upon the making of their reports report the amount so collected and pay the same over to the county treasurer of the county having original jurisdiction of such proceedings. [*Amended; Approved March 3, 1909.*]

221. **Lien of assessments upon lands; notice; recording; satisfaction.** SEC. 6. The filing of the petition shall be deemed notice of the pendency of the proceedings to all persons whose lands are named in the petition, and the filing of the report of the commissioners locating the work and fixing the amount of assessments shall be deemed notice of the pendency of the proceedings to all persons whose lands are named therein and not named in the original petition, and the amount of the assessments as made or approved and confirmed by the court, shall be a lien first and paramount upon the lands so assessed from the time the same are approved and confirmed. The commissioners charged with the construction of the work shall, as soon as may be after he has been directed to construct the work, make out a notice wherein he shall state that the work has been established by the court; also the several assessments to the several tracts of land as the same have been finally confirmed by the court, and cause the same to be recorded in the office of the recorder of each county where any such lands may be situated. Whenever the assessments against any tract of land shall have been paid in money, or satisfied by the construction of a portion of said work as in [is] provided for in section 5 of this act, it shall be the duty of the commissioner or person charged with the construction of such work, within thirty days from the time of such payment or satisfaction, to enter satisfaction of such lien upon the margin of the page where such assessments are recorded, or if this be impracticable for want of room, then on some other page of the same or other record, reference being made thereto by marginal note on the page where such assessment is recorded. This provision shall apply to all drainage commisisoners appointed under this act, and also to all commissioners of drainage in charge of work established under any former law of this state.

222. **Account of commissioner; report to court; suits; liens, etc.:** SEC. 7. Such commissioners shall keep an accurate account of all work or material received or moneys collected by him on account of any and all assessments, and of all payments made on account of the work intrusted to him, and shall take vouchers for such payment. He shall also keep an exact account of the time occupied by him in the performance of his duties. Whenever he shall be engaged on two or more works on the same day, he shall divide such day among them in proportion to the time devoted to each. He shall as often as once in six months make a full report of such matters under oath, to the court; and the court shall allow him for his services not exceeding three dollars per day for the time actually and necessarily employed; but in no event shall the compensation paid to such drainage commissioner be greater than a sum equal to three per cent. of the total cost of such excavation of such drain, except on drains where the total cost of excavation shall be less than three thousand ($3,000) dollars; he shall at all times be under the control and direction of the court, and shall obey such directions; and for failure

so to do shall forfeit his compensation and be dealt with summarily as for contempt, and may also be removed from office by the court. Suit may also be brought upon his bond in the name of the state, and the amount recovered shall be applied to the construction of the work. The court may at any time, when the occasion may require, direct another one of the commissioners to proceed with the construction of the work, and may at any time discharge therefrom the commissioner appointed thereto. All laborers and other persons who shall hereafter perform any labor or other service, or furnish board or any materials in the construction of any work under the provisions of this act shall have a lien upon the fund raised for the payment of the same; and upon notice in writing filed with the person whose duty it shall be to pay out such fund, of the amount due and what the same is for, such person shall withhold payment to the contractor for such work to an amount sufficient to satisfy such lien until the same is adjusted and paid; and in case of disagreement between the contractor and the person claiming such lien as to the amount or validity thereof, the court ordering the construction thereof shall, upon motion of the commissioner, the contractor, or the person claiming such lien, determine such matter; and upon failure to comply with the above provisions, such person in charge of such work shall be liable on his bond for the amount improperly paid over to such contractor: *And provided, further,* That none of the provisions of this act shall apply to proceedings instituted prior to the passage of this act.

223. **Construction of act; supplemental petition; when same may be filed:** SEC. 8. This act shall be liberally construed to promote the drainage and reclamation of wet or overflowed lands, and collection of assessments shall not be defeated by reason of any defect in the proceedings occurring prior to the judgment of the court confirming and establishing the assessment of benefits and injuries, but such judgment shall be conclusive and final, that all prior proceedings were regular and according to law, nor shall any person be permitted to take advantage of any error, defect or informality, unless the person complaining thereof is directly affected thereby. Any person interested may file with the court a supplemental petition showing that lands not mentioned in the original report are affected, as he believes, by such drainage, in which case the court shall require such person to give such notice as it may deem proper and sufficient to the person affected thereby, and shall refer the same to the drainage commissioners for a report, and any and all proceedings may be had thereon, and orders and decrees made therein, the same as if it were an original petition, but the proceedings thereon shall not affect the original petition, unless the court shall, for good reason, order the same consolidated and made a part of the original petition, in which case the court may make such orders therein as are herein authorized.

224. **Drains on state lines:** SEC. 8½. Whenever it may be desirable to construct, widen, deepen, straighten or change any ditch, drain or water course lying on, along, across or near to the state line between the state of Indiana and any adjoining state, or whenever it may be desirable to construct, repair or improve any work of drainage as provided for in this act, which ditch, drain, water course or other work of drainage can not be constructed, repaired or improved in the best manner without affecting lands in such adjoining state, the boards of commissioners and other proper officers of the several counties in this state, so adjoining another state, shall have authority to join with the proper officers of such adjacent counties of other states in the construction, widening, deepening, straightening, repairing or improving of any such ditch, drain, water course, or other work of drainage. Such commissioners of such counties in this state are given powers jointly to enter into contracts with the proper officers of such counties in adjoining states to construct, repair or improve any such work of drainage, each to pay such proportion of the cost sand expenses of the work as by the contracting officials shall be deemed just. Such work of drainage shall be made on petition of land owners or corporations as provided for in this act and this act so far as applicable shall govern the commissioners and other officers of this state in relation to joint work of drainage, provided such adjoining county or counties in other states shall pay their proper share of necessary costs and expenses.

225. **Highways; payment of assessments:** SEC. 9. Any benefits assessed to any highway shall be assessed against the proper township, and shall be paid by the trustee out of the township fund belonging to such township. Assessments on account of improvements to streets and alleys in incorporated towns or cities shall be against such towns or cities.

226. **When petition to be made county commissioners; proceedings thereunder:** SEC. 17. When any proposed work of drainage and the lands, highways, easements, public grounds and cities, towns or townships to be affected thereby are wholly within one county the petition [or] petitioners for such drainage, instead of applying for the same to the circuit or superior court as provided for in this act, may apply thereto by petition to the board of commissioners of such county at any regular monthly session of such board, and all provisions hereinbefore made as to such petitions, notice of the hearing, demurrer, pleading or motion in relation thereto, hearing thereof, dismissal or amendment of the petition and references to the drainage commissioners, remonstrance and exceptions thereto and action and ruling therein; action on such report, allowance and payment of claims, and all other matter in relation to such work, shall be had and concluded as far as applicable by and under direction of such board of county commissioners, as hereinbefore in this act provided for the circuit or superior court board on the report of the drainage commissioners may be taken to the circuit or su-

perior court of the county within the time and in the manner provided in case of appeal from the action of the circuit court or superior court to the supreme court, and a like appeal, taken within like time and in like manner, may be had to the supreme court from the decision of the circuit or superior court on the appeal from the board. The reports of the drainage commissioners shall be *prima facie* evidence of the facts stated in such reports, whether before the board of commissioners, in the circuit or superior court or the supreme court. The county auditor, in case of the filing of a petition for drainage before the county board, shall perform all the duties provided to be performed by the clerk of the circuit court and the board of commissioners, in case of the filing of such petition before the board, is given all the powers required to perform all the duties in regard to such work of drainage, so far as the same is applicable that have hereinbefore been prescribed for the circuit or superior court save and except such board shall have no jurisdiction over any work or drainage where any part thereof or any lands to be affected thereby are situated in another county: *Provided*, That when objections, demurrers, remonstrances, pleadings and reports are to be filed within certain fixed time, the same may be heard by the board at the next term of such commissioners' court. Whenever it shall appear by the statements in a petition for drainage filed under provisions of this section, that the same if constructed will not, with all its branches, exceed two miles in length, and will not cost to exceed three hundred dollars, exclusive of the tile that may be used therein, and that the surveyor of the county is not interested therein, or related to the parties likely to be affected thereby, the auditor of the county shall refer the same at once to the surveyor of the county, and it shall be his duty to investigate and report therein to the auditor of such county within thirty days, and in so doing he shall perform and have all the duties and powers granted by this act to engineers, drainage commissioners and viewers in drainage proceedings. Upon the filing of such report, the auditor shall issue a notice to each land-owner named therein, in which he shall set forth in proper blanks:

First. A general description of the route of said ditch.

Second. The names of the land-owners named therein.

Third. A general description of such owner's land and the amount such land is assessed for benefits or damages.

Fourth. The day when the same will be heard by the board of commissioners, which shall be at the next ditch day, by the rules of such board that it is not less than fifteen days after such report is filed with the auditor.

If the petitioner ask to serve such notices he may do so, but if he fails to call within three days after the filing of such report therefor or if he fails to serve the same, they shall be delivered to the sheriff of the county where such land-owners reside, and such sheriff shall immediately serve the same as summons is served in civil actions, the

cost thereof to be taxed to the petitioner as a part of the expense to be paid by him in said matter. Upon the day set for the hearing, if the board of commissioners find that all persons named in said report have been notified thereof more than ten days prior to such day, they shall proceed to hear the same, and in so doing shall have power to hear and determine said matter the same as is granted in such proceedings in the circuit court and make such changes in plan of said work and to change and modify the assessments of benefits and damages as is granted to said court in this act. And every land-owner shall have the right, and it shall be his duty, to file such objection thereto as might or could be done in such proceedings in the other sections of this act. If any land-owner shall be dissatisfied with the judgment of such board, he shall have the right to appeal therefrom in the same manner that appeals are taken from other decisions of such board; and the court to which such appeal is taken shall have the power to hear and determine such matters as if it originnated in such court. At all of such hearings the report of the surveyor shall be evidence of the fact therein stated, and the burden of changing such report shall be upon the remonstrant. Such ditch shall be constructed and repaired in the same manner as in the act provided for the construction and repair of other ditches. If it shall appear to the board that notice has not been given to all persons affected as hereunto provided, the hearing of such matter shall be continued till they have received notice when such matter shall be heard, and if it appears by affidavit at any time that any land-owner is a non-resident of the state, or his residence is unknown, the auditor of said county shall give notice of such matter in the same way and for the same time that notices are given to non-residents in civil actions in the circuit court.

II. Repair and Cleaning of Drains.

[In force since April 10, 1907.]

(For preceding nine sections of this act see "Construction of Drains.")

227. **Repairs; to be kept free from obstructions; duties of township trustee.** SEC. 10. That all ditches or drains that may have been, or may hereafter be, constructed under and by virtue of any law of this state, shall, except as hereinafter otherwise provided, after the allotment shall be made by the county surveyor as hereinafter provided, be under the charge and supervision of the trustee of the township in which the same are a part thereof, whose duty it shall be to see that the same are cleaned out and kept open and in proper repair, free from obstruction, so as to answer their purpose.

228. **County surveyors duties; allotment for repairs:** SEC. 11. As soon as practicable, after the passage of this act, it shall be the duty of the county surveyor in each county in this state in which any such ditch or drain, or part thereof, is located, when ordered by the trustee of

the township in which some part of such ditch is located, to proceed to view and examine each and every such ditch or drain within his respective county, except dredged ditches, and to fix and determine the portion thereof that the owner of each tract of land and each corporation, county or township assessed of the construction thereof should biennially clean out and keep in repair, and shall also at the same time set apart and apportion to each parcel of land, and to each corporate road or railroad, and to the township where public highways are benefited, a share or portion of such ditch or drain, according to the benefits to be received thereby, to be celaned out biennially and kept in repair by the owner of each tract of land, or by such corporate road or railroad, or by the township. Such surveyor shall, whenever practicable, locate such share or portion of such ditch upon such tract of land, or upon the right of way of such corporate road or railroad, or on the highway, on account of which such share is alloted to the township. In making such allotments such surveyor shall begin at the mouth of the ditch where he shall fix a permanent mark or monument of the place of beginning, and he shall also establish a permanent mark or monument at the upper end of each allotment, and give the location of each share, its number and length in feet, and a brief description of the manner in which the work shall be done. Each ditch or drain shall be cleaned out to the depth and width not less than its original specifications: *Provided,* That where ditches were originally allotted for construction by reviewers appointed by the board of county commissioners, under any former law, the allotments shall remain the same for repair under this act, unless a majority of the parties assessed shall petition the surveyor or the trustee shall request in writing a reapportionment under the provisions of this act, in which event the same proceedings shall be had as in other cases. The allotment shall describe the land in such tracts as may meet the convenience of owners, and in case of a subsequent subdivision of such tracts the allotment may be subdivided by contract, and the duties prescribed under this act pass to grantees: *Provided,* That where any person or persons shall have converted that portion of said ditch running through his or their lands or part thereof into a blind ditch by putting in drain tile of sufficient dimensions to serve the purpose of drainage, said drain tile so put in being continuous from the head or beginning of such ditch through the land of said owner or owners, and thus obviating the necessity of working that part of said ditch so tiled of said ditch on his or their lands, said tiling shall be taken in consideration in making said allotments, and the allotments herein provided shall be made among the land-owners, roads or railroads only through whose lands such ditch is open; and where allotments have been made to include land or lands through which such blind ditch or tiling forms a part of said open ditch, the owner or owners receiving due credit for the allotments so tiled. The owners of the land through which an open ditch runs shall remove all brush and weeds

from the banks of that part of the ditch through the lands, owned by them respectively, during the month of July in each year; and shall be given credit for such work in making allotments for the repair of such ditches.

229. **Record of allotments; notice thereof:** SEC. 12. Such surveyor shall reduce such allotment to writing, and after the same are finally fixed and established he shall record the same in a book to be kept for that purpose, and known as the drainage record. He shall thereupon cause to be posted up, for not less than ten days, in five public places in the township where lands are allotted a portion of said work, write nor printed notices of the place where and the time when he will hear all objections that may be made to such allotments, which notice may be in substance as follows:

To whom it may concern:

You are hereby notified that I will be at my office on the —— day of ——, 19—, at the hour of ——, and will then and there hear all objections that may be made to my allotment for cleaning out biennially and keeping in repair the —— ditch, in —— township, —— county, Indiana, when and where you can appear and be heard if you see fit. ————————, County Surveyor.

Dated this —— day of ——, 19—.

A copy of said notice shall also be sent by mail to the trustee of the township in which an allotment is made by reason of any highway, and to each individual whose lands are allotted portions of work, and to an officer of each corporation, and to a station agent of each railroad to whom portions of said work has been allotted. Where the residence of any non-resident owner of such land is known to the surveyor, he shall send a copy of such notice by mail to such non-resident. If a non-resident owner of land have a known agent in the county a copy of said notice shall be mailed to such agent.

230. **Hearing objections; order thereon:** SEC. 13. Upon the day named in such notice such surveyor shall be present at the time and place therein mentioned, and shall hear all objections made to such allotments, and shall have power to administer oaths to all persons examined before or by him. He may adjourn the hearing from day to day, or from time to time, as may be deemed necessary, until all objections are heard. All persons interested shall take notice of such adjournment without further notice. After hearing all objections that may be offered to such allotments, such surveyor shall confirm or change the same as justice may require, and shall enter an order accordingly, which shall be final and conclusive upon all parties interested, unless appealed from in ten days thereafter.

231. **Who may appeal; notice; costs:** SEC. 14. Any person or corporation aggrieved may appeal from such order to the circuit or

superior court of the county by filing with the clerk of said court, within ten days from the time of such order, an undertaking conditional that he will duly prosecute such appeal and pay all costs that may be adjudged against him on such appeal, such surety to be approved by said clerk; whereupon such clerk shall issue a notice in the nature of a summons to such surveyor, which shall be served by the sheriff of said county, and thereupon such surveyor shall file with such clerk a copy of the record of such allotments and the objection of the appellant thereto, which shall be all the proceedings necessary upon such appeal. All other persons interested shall take notice of such appeal, which shall be tried by the court. If the court reduce the allotment one-fifth in amount then all costs occasioned by such appeal shall be taxed against such surveyor, and paid out of the general funds in the county treasury not otherwise appropriated, otherwise the costs shall be judged against the appellant. If more than one person appeal separately the cases shall be consolidated and tried together. The court may confirm the allotment made by the surveyor or change the same, and its decision upon such appeal shall be final and conclusive. The surveyor shall receive for his actual services in allotting any such ditch for repairs four dollars per day and not to exceed two dollars per day for the services of each deputy surveyor, and the same rate for parts of days, to be paid out of any money in the county treasury not otherwise apportioned, upon a report on oath filed with the county auditor, but in cases wherein it is necessary to employ a civil engineer to act in such capacity as a deputy surveyor, then such deputy shall be paid at the rate of not to exceed four dollars per day for the time actually employed: *Provided*, That the total amount to be allowed to such surveyor for the services of himself and his necessary assistants shall not exceed the sum of ten ($10) dollars for each mile of any ditch or drain so allotted by him.

232. **Cleaning and keeping in repair; trustee's duties:** SEC. 15. It shall be the duty of the township trustee to procure a transcript of the surveyor's record of allotments of ditches in his township as soon as practicable after the passage of this act or after the same has been made, and he shall biennially prior to the first day of August fix a time within which each allotment on every ditch shall be cleaned out and put in repair by the person whose duty it shall be to perform said work; in fixing such time for the cleaning out of such allotment such trusteeshall beginwith the allotment nearest to the mouth of any such ditch, and proceed in regular succession up stream to the beginning of such ditch. He shall notify owners of allotments in sections of not less than one mile in continuous length of the ditch to have their respective allotments cleaned and ready for inspection at one and the same time and may, in his discretion, notify a greater number, or even all the owner of allotments to be completed and ready for inspection on the same

day, and any person who shall permit or allow any earth, sand or material from an uncleaned allotment to wash down, in or upon, or in any [way] fill or impair any allotment which is clean, shall remove the same at his own cost, and on failure so to do, the trustee shall cause the same to be removed at the cost of the party so in default and such trustee may recover such cost before a justice of the peace or any court of record in a suit brought by him against the person so in default, or he may certify the amount of such cost and expense to the auditor of the county, who shall place the same upon the next tax duplicate against the land of the party so in default and the same shall be collected the same as assessments are collected. He shall make a record of the time so fixed by him for the completion of each allotment on every such ditch separately in a book provided for that purpose. That on or before a day fixed by said trustee for that purpose, the owner of the land allotted shall appear before the trustee and declare his intention to clean or repair his said allotment, and shall execute and deliver to said trustee an undertaking in such sum as the trustee shall fix providing for the completion of said work within the time specified and according to the original specifications. That prior to the first day of August, of every second year in which such ditch is to be cleaned or repaired, notice shall be given to the owner or occupant of each tract of land on which allotments have been made, which notice may be served by the trustee or other competent person, or mailed to his address by registered letter. Such notice shall be sufficient if it name the ditch, the owner of the land, describe the allotment, specify the time within which the allotment shall be completed, and the time at which the owner shall appear and declare his intention to perform said work and file undertaking for the completion of the same. That immediately after the day fixed for the filing of the undertaking by the owner of the land allotted, said trustee shall give ten days' notice by posting three notices in five public places within the township, describing each allotment in which an undertaking by the owner has not been filed, and after ten days sell the same for construction to the best responsible bidder, taking bond from the contractor for the faithful performance and completion of said work: *Provided*, Said trustee may cause said allotments in which owner of land has not filed bond, completed without sale, where in his judgment it can be accomplished in a cheaper manner.

233. **Completion of allotment; failure; costs:** SEC. 16. It shall be the duty of every owner of land or corporation who has filed a written undertaking for the completion of any allotment, to perform the same within the time fixed, and on failure so to do the trustee shall proceed at once to have the same completed, and the costs thereof together with the costs for the completing of the other allotments including his own per diem certified to the auditor of the county, who

shall place the same on the tax duplicate as other taxes against such person or corporation to be collected as other taxes are collected, and when collected the same to be paid over to such trustee, or such trustee may recover such expenses and his fees before any justice of the peace of the township where the owner resides, or through or into which such road or railroad runs; or he may bring suit in the circuit court or superior court of the county to collect such expense and fees, and enforce and foreclose the lien on such land, township or railroad, and he may bring suit in the circuit or superior court of the county upon any undertaking or upon the bond of any contractor for any breach thereof, and the amount recovered shall be paid into the township fund of such township, and in all suits brought by the trustee under the provisions of this act such trustee shall also recover reasonable attorney fees and the judgment shall be without relief from valuation or appraisement laws: *Provided,* That prior to the first day of August, in any year, in which a ditch shall be cleaned, the trustee may by the assistance of a sruveyor or otherwise ascertain the grade line and the cubic yards of earth to be removed and when said work is completed said trustee may have the same accepted by a competent surveyor. And the service of the surveyor and giving of notice shall be paid by the township.

For section 17 of this act see last section under "Construction of Drains." For sections 18 and 19 of this act see "Miscellaneous" in this chapter.

234. When surveyor may repair drain. SEC. 20. The repair of all drains or ditches other than dredge ditches, shall be in the hands of the township trustees in whose townships such ditches or any part thereof may be situate: *Provided,* That when not less than one-third of the persons whose lands are assessed upon any ditch, shall petition the trustee of such township or townships, such trustee shall turn the work of repair and supervision of any ditch mentioned in such petition over to the county surveyor, who shall proceed to repair and clean such ditch in the same manner that such work would be done under the provisions hereof for the cleaning of such ditches by township trustees: *And, provided,* That when any such trustee shall fail to perform any duty provided for him in this act, he shall be guilty of a misdemeanor, and may be fined in any sum not less than $25 nor more than $100, in any court of competent jurisdiction.

[In force since April 10, 1907.]

235. Repair and cleaning of drain; petition to surveyor, proceedings: SEC. 1. Whenever after the passage of this act, any county surveyor of this state, shall have been petitioned so to do by any number of persons owning in the aggregate one-eighth of the lands originally assessed for the construction of any drain which may have been constructed unde rthe provisions of this or any former act, within ten days

after the granting of such petition for repairs such surveyor shall proceed to view such drain and shall determine the number of cubic yards in each station of one hundred feet thereof which will have to be excavated to repair such drain to its original specifications. He shall also estimate the total cost of excavation and the incidental costs thereof, and estimate the average cost per cubic yard for the excavation of any part or the whole of such drain sought to be repaired. And he shall view all of the lands which will be affected by such work or rpairs and determine the proportion of benefits or damages that each tract will sustain by reason of such repairs, and also determine the proportionate share of excavation in cubic yards that each tract of forty acres or less should bear toward the doing of such work of repairs, and the proportionate share of incidental costs that each tract should be charged with in the prosecution of such work, and he shall make a record of such estimates and assessment of benefits and damages in a book kept in his office for that purpose, which shall show the name of each landowner of the several tracts of land and the amount of the assessment of benefits and proportionate share of excavation and incidental expenses assessed to each tract of forty acres or less according to the government surveys and in Clark's grant and the French grant, and all preemptions of Indian reservations in such tracts as are owned by such person or corporation which will be affected by the repair of such drain. Such surveyor shall then make a separate allotment sheet for each landowner, describing thereon the lands belonging to such owner which will be affected by such work of repairs, and designate thereon separately the benefits or damages which each tract of land will sustain by reason of such work of repairs, together with the number of cubic yards of excavation with which each tract of land should be charged, and the proportionate share of the estimated incidental expenses that such owner or owners should pay toward the construction of such work. And it shall be the duty of the surveyor to indorse on each allotment sheet the postoffice address of such owner or owners, if it can be ascertained from the files and records of the treasurer's office or by diligent inquiry, and where such postoffice address can not be ascertained he shall indorse on such allotment sheet the fact that the postoffice address of the owner of the lands therein described is not known. It shall then be the duty of such surveyor to deliver to the township trustee of the township through which the greater portion of such drain extends a certified copy of the original specifications of such ditch, together with two copies of each allotment sheet so made, and deliver the same to such trustee within ten days after such surveyor shall have made his examination of such drain, as above provided. Upon the receipt by such trustee from the surveyor of such allotment sheet and the certified copy of the original specifications of such drain, such trustee shall, within ten days thereafter, deliver in person to each land-owner or

land-owners, who are residents of the township or townships through which such drain extends, and against whose lands allotments have been made, one of the copies of the allotment sheet so received by such trustee showing such land-owner's allotment, after first noting thereon the day, hour and place in such township where such trustee resides, when said work of repairs shall be by him offered for sale to the lowest and best bidder, and if any such owner or owners cannot be found, he shall leave such allotment sheet at the last and usual place of residence of such owner or owners, or he may deliver the same to the tenant or agent, if any there be, of such owner or owners. And such trustee shall also mail allotment sheets to the land-owners who are not residents of the township where such ditch or drain extends, and who are interested, showing their lands which will be affected by such work of repair, indorsed with a like notice as to the day and place of sale of such drain. All of said allotment sheets shall be so delivered and mailed not less than fifteen days prior to the day designated therein for the date of the sale of such drain. At any time, not less than three days before the day designated in such allotment sheets for the sale of such work of repairs, any land-owner so assessed may appeal from the action of the county surveyor to the circuit or superior court of the county in which the proceedings for the construction of the original drain or ditch were had, by filing with the clerk of such court at any time not less than three days prior to the day designated by such trustee for the sale of such ditch a bond payable to such surveyor, in twice the amount of his assessment, with surety to the approval of the clerk, conditioned that he will duly prosecute his appeal and pay all the costs that may be adjudged against him; thereupon the clerk shall issue a summons to the county surveyor, which shall be served by the sheriff, and shall issue a summons to such trustee, informing him of such appeal, which shall be served by the sheriff; and the surveyor shall file with the clerk a copy of the record of assessments for such work of repairs, which shall be all the pleadings necessary, and the appeal shall stand for trial at the same time as an appeal from the judgment of a justice of peace. Such trustee, upon receipt of such summons from the clerk, shall proceed no further with the sale of such work of repairs until final action of the court. Such appeal shall be tried by the court without a jury; there may be a change of venue from the judge, but not from the county, and the only questions tried shall be to determine, first, whether or not the notices above provided for were properly given; second, whether such work of repairs is necessary; third, what is the cost thereof; fourth, whether appellants' lands are benefited thereby, and, if so, what part thereof shall be assessed against the lands of such appellant; fifth, whether or not such work of repair will benefit at least one-fourth of the lands originally assessed for the construction of such drain. Upon such hearing the court shall make such orders as he may deem proper and equit-

able in the premises, and if sufficient cause be shown he may dismiss such proceedings. From the decision of the court there shall be no appeal, and no work shall be done until such appeal is determined. If the court shall reduce the assessment against the lands of the appellant twenty per cent. of all costs occasioned by the appeal shall be added to and become a part of the total assessment and be distributed to the various tracts of land assessed for the repairs in proportion to each assessment. But if the court shall not reduce the assessment on the land of the appellant twenty per cent., then the appellant shall pay all costs occasioned by the appeal, including the per diem for the county surveyor for making copy of assessments after the determination of such appeal. Such trustee shall set a new date for the sale of which work of repair, shall give to the land-owners named additional notice as to the time when he will sell the work of such repairs, as above provided, except that such notice shall only contain the time and place when such sale will take place, provided the courts shall have sustained the action of the surveyor in ordering such repairs to be made. If no appeal be taken to the circuit court by any interested land-owner, the trustee shall, on the day and at the time and place designated in the allotment sheet so delivered and mailed to such land-owners, proceed to sell the whole of said drain to the lowest and best bidder or bidders. And any land-owner interested who may be present at the place of sale by himself or agent, who may desire to do the share of the work of repairs allotted to him, may enter into a written agreement with such trustee, which written agreement shall designate the stations or part of stations which said land-owner is to excavate, and it shall state therein the time when the work of the excavation of the number of cubic yards in the allotment shall be completed, and shall designate the total number of cubic yards of excavation in each station or part of station thereof so awarded to such land-owner for excavation. And it shall be the duty of the trustee, as near as may be, to assign to any such land-owner or owners portions of the drain to be excavated by him, the part of the ditch nearest the lands of such owner or owners for excavation. Such trustee shall also enter into a written agreement with the contractor who has bid off the whole of such work for the faithful performance of all of such work of repairs within the time that shall be designated by such trustee at the price for which such work was let, and such contract shall provide that the land-owner or owners who have contracted to do their own allotments shall be permitted to do so, and the stations or parts of stations to be constructed by such owner or owners shall be designated in such contract, and the work embodied in the several allotments so contracted for by the several land-owners shall be deducted from the total work sold to such contractor. And such trustee shall take from such contractor a good and sufficient bond, signed by freehold surety, for the faithful performance of such work by the

time designated by said trustee in a sum double in amount of the contract price. If any such owners of real estate who have contracted to do the work of their allotments shall not have completed the same by the time designated in their contracts with such trustee, such contractor for the whole of such work shall have the right and it shall be his duty under such written agreement with the trustee, to proceed with the excavation of the allotment or allotments of such derelict land-owner or owners, and such contractor shall be entitled to receive as pay the contract price per cubic yard shown in his agreement with the trustee therefor. After the completion of any such allotment by the contracting land-owners and the work of such contractor for the whole of such work, upon notice being given to the trustee of said fact, it shall be his duty to immediately inspect such work of repair or any portion thereof, and where the same is fully completed to the original specifications of the drain, to issue to each land-owner and to the contractor for the whole of such work a certificate showing that such work or repair has been done according to the specifications, and the part of such drain and the amount each have completed according to specifications. After such work or repair has been completed and so accepted by such trustee he shall certify that fact to the surveyor, together with a statement of the work done by each contractor, the price he was to receive therefor, and the amount due him thereon, and also the names of the owners who have performed their allotments and the part of the work they each have done according to the specifications, all of which shall be indorsed on the duplicate allotment sheets in his possession, and such allotment sheets, together with the certified copy of the original specifications of such drain, shall be by such trustee returned to be filed in the office of the surveyor of such county. And the trustee shall also file his sworn statement of the actual number of days in which he was employed in the prosecution of such work of repairs, together with his bill for such services at the rate of two dollars per day for each day he may be so employed in such work, stating in said bill the specified work he did on each day. Upon the receipt of said papers from such trustee the surveyor shall make a certificate showing costs of such work of repairs and the amount with which each land-owner should be charged for such work, giving credit to those who contracted for their own allotment and shall have performed the same, and the number of days which the surveyor was employed in the prosecution of such work, showing an itemized statement of each day or part of day employed by him in the prosecution of such work and the particular parts of work on each day or part thereof so performed by him, and other necessary expenses incurred in the prosecution of such work, the bills for the publishing of the notices and other necessary expenses incurred in the prosecution of such work, designating thereon the proportionate share of all such incidental expenses that each land-owner affected should

pay as apportioned to the several tracts of land, and shall file such certificate with the auditor of the county. If such certificate and bills shall have been filed with the auditor more than five days prior to any regular meeting of the board of commissioners of such county, the same shall at the next regular session of the board of commissioners of the county be presented by said auditor to said board, and it shall be the duty of the board to audit the bill for the services of said trustee and surveyor and the bills for all other expenses, and such board shall approve or reject any or all of such bills, as it may deem proper, or it may approve or reject any part of any or all such bills, and the board shall indorse its action on the back of each bill separately. And should the board of commissioners reduce in amount or reject any such bills, or any part thereof, thereby reducing the incidental cost of such repairs, the auditor shall, after thirty days from the action of such board, if no appeal be taken, credit the several land-owners with their proportionate share of such reduction on the certified copy received from such surveyor. And after such thirty days from the date of the action of such board of commissioners shall have elapsed it shall be the duty of the auditor to mail a notice to each land-owner, whose postoffice address can be ascertained, which notice shall state the amount that there is due from him to be paid into the treasury by reason of such work of repairs, and such notice shall show separately the amount due from him for his share of the actual work of excavation and his share of such incidental expenses, and if such sums be not paid within thirty days after the mailing of such notice, such auditor shall place the amount so due from each tract upon the tax duplicate with five per cent. penalty added thereto, and such sums shall be a first lien, as taxes are a lien upon the lands against which they are assessed, and shall be due and collected at the next ensuing semi-annual collection of state and county taxes, and all laws for the collection of state and county taxes shall apply and be enforced in the collection of such assessments: *Provided*, That such lien shall attach against said lands from the date of the filing of such petition for repairs with such surveyor. Any land-owner desiring to relieve his land of the lien of such costs of repairs may at any time pay the whole amount thereof into the treasury of the county, and his land shall be released from such lien. If no appeal be taken from the action of the board of commissioners in allowing or rejecting any of such bills the auditor of the county shall, at the expiration of thirty days from the date of the action of said board, draw his warrant upon the county treasurer payable to the proper person for the payment of all bills and parts of bills so approved, which warrant shall, for the time being, be paid out of the county revenue, and the county treasurer shall be reimbursed therefor by the payment and collection of such assessments as above provided. It shall be unlawful for the board of commissioners to approve any bills or parts thereof, and for

the auditor to draw any warrants for the payment of the same, until there shall first be filed by the claimants a verified statement that such bills are true and correct. Said surveyor shall receive for the necessary time he shall be engaged in the prosecution of the work of repairs the sum of four dollars per day for each day by him so engaged, and a proportionate share of such four dollars per day for each part of a day he shall be so engaged in the prosecution of such work, and not to exceed two dollars per day for the services of each deputy surveyor and the same rate for parts of days to be paid out of any money in the county treasury not otherwise appropriated, upon a report on oath filed with the county auditor, but in cases wherein it is necessary to employ a civil engineer to act in such capacity as a deputy surveyor, then such deputy shall be paid at the rate of not to exceed four dollars per day for time actually employed. The trustee of any township engaged in any such work shall receive for his services two dollars per day, but the total amount to be allowed him for assisting in the prosecution of any such work of repairs shall not exceed ten dollars on all drains where the actual work of excavation shall be less than one hundred dollars, and where the actual cost of excavation shall exceed one hundred dollars he shall not receive as compensation a greater sum than that equal to ten per cent. of the first one hundred dollars cost of excavation and three per cent. of any amount in excess of one hundred dollars. And it shall be unlawful for the board of county commissioners to approve any bills of such surveyor and trustee in excess of the sums above provided for: *Provided*, That the provisions of this act for the repair of public drains shall not apply to drains which have been originally constructed by dredging machines, except that if a majority in number of land-owners representing a majority in acreage of the lands assessed for the original construction of any ditch, originally constructed by dredging machines, shall petition the county surveyor to place the repairing and maintenance of said ditch under the provisions of this act, the county surveyor, after being satisfied that the petition has been signed by a majority in number of owners of land originally assessed for the construction of said ditch, representing a majority in acreage of said land so originally assessed, shall proceed to cause the repair of any such ditch or drains in the manner above provided, nor shall it apply to the repair of tile ditches.

236. Annual cleaning and repair; apportionment of work and cost: SEC. 2. After the passage of this act any county surveyor of this state, after he shall have been petitioned so to do by any number of persons, owning in the aggregate one-eighth of the lands originally assessed for the construction of any drain which may have been constructed under the provisions of this or any former act, shall proceed to view and examine such ditch or drain within his respective county, and to fix and determine the portion thereof that the owner of each tract

of land and each corporation, county or township assessed for the construction thereof should annually clean out and keep in repair, and shall also at the same time set apart and apportion to each parcel of land, and to each corporate road or railroad, and to the township where public highways are benefited, a share or portion of such ditch or drain, according to the benefits to be received thereby, to be cleaned out annually and kept in repair by the owner of each tract of land, or by such corporate road or railroad, or by the township. Such surveyor shall, when practicable, locate such share or portion of such ditch upon such tract of land, or upon the right of way of such corporate road or railroad, or on the highway on account of which such share is allotted to the township. In making such allotments such surveyor shall begin at the mouth of the ditch and give the location of each share, its number and length in fee, and a brief description of the manner in which the work shall be done. Each ditch or drain shall be cleaned out to a depth and width not less than its original specification: *Provided*, That where such ditch was originally allotted for construction by reviewers appointed by the board of county commissioners the allotments shall remain the same for repairs under this act, unless a majority of the parties assessed shall petition the surveyor for a reapportionment under the provisions of this act, in which the same proceedings shall be had as in other cases: *And provided, further*, That when it may be shown to the satisfaction of the trustee that there is no necessity for an annual cleaning of such ditch or drain he shall not enforce the penalties for nonperformance, but in no case shall the work be delayed more than two years. The allotment shall describe the land in such tracts as may meet the convenience of owners, and in case of a subsequent subdivision of such tracts the allotment may be subdivided by contract, and the duties prescribed under this act passed to grantees. Such surveyor shall reduce such allotments to writing, and record the same in a book to be kept for that purpose, and known as the drainage record. He shall thereupon cause to be posted up for not less than ten days, in five public places in the township yhere lands are allotted a portion of said work, written or printed notices of the place where, and the time when he will hear all objections that may be made to such allotments, which notice may be, in substance, as follows:

To whom it may concern:

You are hereby notified that I will be at my office on the —— day of ——, 19—, at the hour of —— and will then and there hear all objections that may be made to my allotment for cleaning out annually and keeping in repair the —— ditch, in —— township, —— county, Indiana, when and where you can appear and be heard, if you see fit.

Dated this —— day of ——, 19—.

——————, County Surveyor.

A copy of said notice shall also be served upon the trustee of the township in which an allotment is made to any highway, as summonses are served upon each resident owner or occupant of land, and upon the officers of each corporate road or railroad upon whom summons might be served in any proceeding against said road or railroad alloted a portion of said work. Where the residence of any non-resident owner of such land is known to the surveyor he shall send a copy of such notice by mail to such non-resident owner. If a non-resident owner of land have a known agent in the county, a copy of said notice shall be served upon such agent. Upon the day named in such notice such surveyor shall be present at the time and place therein mentioned, and shall hear all objections made to such allotments, and shall have power to administer oaths to all persons examined before or by him. He may adjourn the hearing from day to day or from time to time as may be deemed necessary, until all objections are heard. All persons interested shall take notice of such adjournments without further notice. After hearing all objections that may be offered to such allotments, such surveyor shall confirm or change the same as justice may require, and shall enter an order accordingly, which shall be final and conclusive upon all parties interested, unless appealed from in ten days thereafter. Any person or corporation aggrieved may appeal from such order to the circuit court or superior court of the county by filing with the clerk of said court, within ten days from the time of such order, an undertaking conditional that he will duly prosecute such appeal and pay all costs that may be adjudged against him on such an appeal, such surety to be approved by said clerk; whereupon such clerk shall issue a notice in the nature of a summons to such surveyor, which shall be served by the sheriff of said county. And thereupon each surveyor shall file with such clerk a copy of the record of such allotments, and the objection of the appellant thereto, which shall be all the proceedings necessary upon such appeal. All other persons interested shall take notice of such appeal, which shall be tried by the court. If the court reduce the allotment one-fifth in amount, then all costs occasioned by such appeal shall be taxed against said surveyor, and paid out of the general funds in the county treasury not otherwise appropriated, otherwise the costs shall be adjudged against the appellant. If more than one person appeal separately, the cases shall be consolidated and tried together. The court may confirm the allotment made by the surveyor or change the same, and its decision upon such appeal shall be final and conclusive. The surveyor shall receive four dollars ($4.00) per day, to be paid out of any money in the county treasury not otherwise appropriated, upon a report on oath filed with the county auditor, giving day and date for all days and parts of days employed thereon, naming the ditch so employed thereon: *Provided*, That such surveyor for the allotting of any such ditch under section two of this act shall not receive for the services of himself and necessary assistant a total sum greater

in amount than eight dollars ($8.00) per mile of such ditch so alloted. After such allotments have been made it shall be the duty of the owner of each tract of land, and of each corporation road or railroad, and the supervisor of the road district in which said allotment is located, to clean out and repair the portion of said work so allotted to such tract of land, or to such road or railroad, or to such township between the first days of August and November of each and every year thereafter, and in order and the time fixed by the township trustee under the provisions of the above entitled act, and upon failure to do so such owner, or such road or railroad shall be liable to a penalty of one dollar for each and every day such work remains unfinished after the expiration of the time so fixed by the township trustee aforesaid, to be recovered by the township trustee in a suit therefor before any justice of the peace of the township in which such owner resides or through or into which such road or railroad runs, and all such penalties when recovered shall be paid into the general township funds: *Provided, however,* That the penalties provided for in this section shall in no case be recovered from any person unless the allotments between his own and the mouth of said ditch shall have been completed within the time fixed by said trustee. It shall be the duty of the township trustee to procure a transcript of the surveyor's record of allotments of ditches which may be allotted after the passage of this act, in his township as soon as practicable after the same have been made, and, before the first day of August of each year, fix a time within which each allotment on every such ditch shall be completed by the person whose duty it shall be to perform same; in fixing such time for the completion of such allotments such trustees shall begin with the allotment nearest the mouth of any such ditch, and proceed in regular succession up stream to the beginning of such ditch. He shall make a record of the time so fixed by him for the completion of each allotment on every such ditch separately in a book to be provided for that purpose, and shall, prior to the said first day of August of every year (in which such ditch is to be cleaned or repaired), notify each person to whose land an allotment has been made of the time so fixed for completion thereof; such notice shall be sufficient if it name the ditch, describe the allotment and give the name of the owner of lands to which the allotment shall be completed, and it may be served by the trustee or other competent person. It shall be the duty of every person or corporation to whom any allotment has been made, upon receipt of such notice from the trustee (or other person for him), to perform his allotment within the time fixed within said notice, and on failure to do so the trustee shall proceed at once to have the same completed, and shall certify the cost thereof, to the auditor of the county, who shall place the same on the tax duplicate as other taxes against such person or corporation, and to be collected as other taxes are collected, and when collected, the same to be paid over to such trustee or such trustee may recover such expense before any justice

of the peace of the township where the owner resides, or through or into which such railroad or road runs; or he may bring suit in the circuit or superior court of the county to collect such expense and fees, and enforce and foreclose the lien on such land, or upon such road or railroad, and in all suits brought by the trustee under the provisions of this act such trustee shall also recover reasonable attorney's fees, and the judgment shall be without relief from valuation or appraisement laws. If the portion or any part thereof of such ditch or drain so allotted to the land of any owner, or to any corporate road or railroad becomes filled or obstructed by the negligence of any owner or occupant of any land, or by cattle, horses, hogs or other stock of such owner or occupant, it shall be the duty of such owner or occupant to remove all obstructions or filling, at his own expense, before the 31st day of July of each year, and upon failure to do so the owner of the land or the corporate road or railroad to which such portion was allotted may recover the cost of removing such filling or obstruction from such owner or occupant in any court of competent jurisdiction, with attorney's fees. In any township where animals are permitted to run at large upon the highways it shall be the duty of the supervisors of the various road districts in the township to remove all fillings and obstructions caused by such animals from that portion of such ditches or drains as may be located along or across such highways in their respective districts. The trustees shall receive two dollars ($2.00) per day, and at the same rates for parts of days for services actually rendered under the terms of section two of this act, which provides for the repair of ditches by allotments, to be paid him out of the township general fund, to be appropriated and allowed by the township advisory board on an itemized statement of such trustee, giving day and date and name of such ditch on which said services were rendered. Such trustee shall not accept any allotment or allotments as completed until he has personally inspected the same and found such allotment or allotments worked to their original specifications. When a ditch or drain which passes through or extends into two or more counties, the trustee or trustees having jurisdiction over the same as provided for in this act. The trustee having the lower end of such drain or ditch shall work the same across his township and to his township line, and the trustee next above having the upper end of such ditch or drain shall commence where the said first trustee left off and work the same across his township. And the next trustee so on up stream, as provided in this act, until the same is completed to the upper end thereof: *Provided, however,* That such trustee shall not work or clean a ditch or drain that has been dug by a dredge boat only on a petition signed by a majority of all persons interested, whose lands have been assessed for benefits for the construction of the same, and on the filing of such petition such trustee shall work or clean such ditch as provided in this act. If any township trustee or road supervisor shall fail to perform any work required of him by this

act, after ten days' notice to him in writing by any person interested, he shall be liable with his sureties on his official bond for all damages caused by such failure to perform his duty, to be recovered by the person or persons damaged, and he shall also be deemed guilty of a misdemeanor, and upon conviction thereof be fined in any sum not exceeding fifty dollars ($50.00). If at any time after two years from time any allotment of any ditch is made under this act, a petition signed by one-half of the parties interested in said allotment, stating that said allotment is unfair, and asking for a new allotment, is filed with the county surveyor, the said county surveyor shall proceed to examine said ditch, and if he find the allotment to be unfair or unjust he shall proceed to reapportion said ditch as though no previous allotment had been made, but if he find no cause for the complaint he shall so report to the county auditor, who shall tax all costs in the proceedings to the persons signing said petition, and said costs shall be collected as other taxes are collected: *And, provided further,* That land-owners through whose lands such ditch shall run shall be required to keep all noxious weeds and grass removed from the bank of such ditch so running through his, her or their land between the first day of June and the first day of August of each year, as provided for in this section: *Provided, also,* If any trustee or county surveyor shall refuse or wilfully neglect to perform any duty imposed by the provisions of this act, he shall forfeit and pay a fine of twenty dollars for every such refusal, to be recovered in the name of the state for the benefit of the common school revenue of the state at the suit of any person aggrieved by such refusal or neglect of any such official: *Provided,* That none of the provisions of this act shall in anywise affect the work of repairs of any drain now in progress or any contract for repairs of any drain made under any of the laws of this state now in force: *Provided,* That this act shall not repeal any law enacted by the session of 1907, but shall be supplemental thereto.

[In force since March 6, 1905.]

237. **Lakes of fresh water protected:** SEC. 1. That it shall be unlawful for any person or persons, firm or corporation, to locate, dig, make, dredge, or in any manner construct, or for any court, or board of commissioners, or body of viewers or drainage commissioners, to order or recommend the location, establishment or construction of any ditch or drain cutting into or through, or upon the line of any fresh water lake or lakes in the state of Indiana, or to locate, dig, make, dredge or in any way construct any ditch or drain, having a bottom depth lower than the present water line of such lake, within forty rods of any point on the line of such lake where the line or any portion thereof is known or ascertainable; or in case such line or any part thereof is lost and can not be ascertained within forty rods from high water mark on the margin of such lake, such high water mark to be the highest point on such margin to which such water has arisen within the ten years last past.

238. **Interference with dam, bank, or levee prohibited:** SEC. 2. That it shall be unlawful for any person or persons, firm or corporation, to cut into or around, or to attempt to cut into or around, or in any manner interfere with, or attempt to interfere with, change or destroy any dam, bank or levee already constructed, or which, under the laws of this state may hereafter be constructed for the purpose of maintaining the level of the waters of such lake at their established level, or to cut into or through, or attempt to cut into or through, or in any way interfere with, or attempt to interfere with the banks or shores of any of such lake or any part thereof in such a way as to lower or tend to lower the waters of such lake.

239. **Alteration of bank, dam or spillway prohibited:** SEC. 3. That it shall be unlawful for any person or persons, firm or corporation to interfere with, change or alter, or attempt to interfere with, change or alter any bank, dam, spillway, outlet or outlets of such lake in such manner as to lower the existing level of such lake or lakes.

240. **Penalties:** SEC. 4. Any person or persons, firm o rcorporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100), nor more than five hundred dollars ($500), or by imprisonment in the county jail for not less than thirty (30) days, nor more than one year, or by both fine and imprisonment, in the discretion of the court.

241. **Drains under construction:** SEC. 5. All ditches or drains in the vicinity of such lakes, now ordered and in process of construction, shall be continued under and in accordance with the provisions of the existing law, as modified by this act, and the commissioners of drainage, appointed by the court, shall proceed with the construction of any such work, pay all the expenses of the same, including reasonable attorney's fees, to be allowed by the court establishing the same.

242. **Effect of act:** SEC. 6. This act shall not supersede or affect any law passed at this sixty-fourth session of the general assembly.

III. Floodgates.

[In force since February 28, 1903.]

243. **Floodgates, petition, construction, cost:** SEC. 1. That whenever the lands drained by a ditch, which has its outlet in a stream or watercourse, is so situated that the water from such stream or watercourse in high-water will back up and through such ditch, and overflow such lands drained thereby before such stream or watercourse overflows its banks, it shall be the duty of the township trustee in any township where such ditches and watercourses and streams exist, upon the petition of a majority of the persons owning lands benefited by said ditch, to build suitable and sufficient floodgates at the outlet of

such ditch or near enough thereto to prevent the water from said stream or watercourse flowing into said ditch and from said ditch to the low lands lying along the line thereof before the said stream or watercourse overflows its banks: *Provided*, The cost thereof shall not exceed five per cent. of the assessed value of the property benefited.

244. **Notice, remonstrance, hearing:** SEC. 2. Upon the filing of such petition with the trustee of such township, such trustee shall cause to be posted in three conspicuous places in said township notices of the filing of such petition, and such notices shall state the time and place of the hearing of said petition, which notices shall be posted not less than ten (10) days before the time of hearing, and upon the day set for the hearing he shall consider any remonstrance that may be filed, and shall determine whether such floodgate shall be constructed. In case he shall determine that it is of benefit to the owners of the land along the line of such ditch, he shall order the floodgate to be constructed upon such plans as shall in his opinion be sufficient for the purpose.

245. **Township trustee to superintend construction; assessments of cost of construction:** SEC. 3. Such floodgates shall be constructed under the supervision of said township trustee, and the costs thereof shall be assessed against the owners of the lands benefited by such ditch, and such land shall be assessed for the cost of the construction thereof in proportion to the actual benefits to the lands affected thereby. Such assessments shall be certified by said trustee to the county auditor, who shall certify them to the treasurer of such county, and such treasurer shall proceed to collect the same as taxes are collected.

246. **Remonstrance and appeal:** SEC. 4. Any person aggrieved by the action of the trustee in regard to the establishing of such floodgate, or refusing to establish the same, or by the assessment of the cost thereof, may remonstrate and appeal from the decision of such trustee to the circuit court, and proceedings in regard to the same shall be controlled by the law regulating remonstrances and appeals in the law provided for the establishment of ditches.

IV. Miscellaneous.

[In force since April 10, 1907.]

247. **Obstructions by owner of land; removal:** SEC. 18. That the owner of inclosed land through which any allotted ditch may run, shall be liable to the trustee for any obstruction caused by cattle or stock, and upon notice from the trustee, the owner of said land shall immediately remove such obstruction, and if not so removed, the trustee shall have said ditch repaired, and may sue such owner in any court having jurisdiction, and collect all expenses incurred in making any such repair, provided such expenses shall include the reasonable attorney's fees.

248. Petition for tiling or change of drain; proceedings thereunder. SEC. 19. Should the owner of any land, or any corporation, affected by the construction, change, improvement or extension of any work of drainage under this or any former law of this state, be of the opinion that such work, or any part of it, may be more economically kept in repair, or may be made more efficient for its purpose, by tiling and covering; by removing tile and making the drain open; by changing the line of the drain or extending its length; or by making any other change in the work as originally constructed, such land owner or corporation may apply for such change, improvement or extension by filing a petition therefor with the circuit or superior court, or with the board of commissioners, as the case may be, of the county in which the proceedings were had for the construction of such work. The form and contents of such petition and other provisions in relation thereto shall, so far as applicable, be the same as provided in section two of this act for the original petition for the construction of the work; and the provisions of section three, as to notice and hearing of such petition or remonstrance thereto, reference thereof to the drainage commissioners; the provisions of sections three and four as to the report of the drainage commissioners, exceptions thereto and action on such exceptions and on the report; and the provisions of section five and section seven as to the duties of the superintendent of construction, shall, so far as applicable, be the same in case of such change or improvement in such work of drainage as in case of the original construction of the work; and if such work of change or improvement is done under the direction of the circuit or superior court, and the total cost exceed five thousand dollars, the provisions of section six in relation to the issue of drainage bonds shall also apply. In all other respects the provisions of this act in relation to the construction of any work of drainage shall, so far as applicable, govern in the making of any such change, improvement or extension of any work constructed under this act or under any former drainage law of this state: *Provided*, That if the changes contemplated do not affect more than two miles of said ditch and will not cost to exceed three hundred dollars ($300.00) exclusive of tile to be used therein, then all the procedure and provisions in relation thereto may be had in accordance with the provisions of section 17 of this act: *Provided, further*, That if the drain which it is proposed to change in accordance with the method of procedure laid down in said section 17 of this act, was originally established in the circuit or superior court, then the clerk of such court shall proceed in all ways as would the auditor of the county in carrying out the provisions prescribed for him in said section 17.

NOTE:—See page 73 for Section 17.

CHAPTER 9.

Exemption of Property from Execution.

[In force since May 31, 1879.]

249. Exemption; six hundred dollars: SEC. 1. An amount of property not exceeding in value six hundred dollars, owned by any resident householder, shall not be liable to sale on execution or any other final process from a court, for any debt growing out of or founded upon a contract, express or implied, after the taking effect of this act.

250. Kind of property exempt: SEC. 2. The property may be real or personal, or both, as the debtor may elect and designate at the time he claims the exemption.

251. Selection of appraisers: SEC. 3. For the appraisement of any property to be exempted under the provisions of this act, two disinterested householders of the neighborhood shall be chosen, one by the laintiff, his agent or attorney, and one by the execution debtor; and these two, in case of disagreement, shall select a third; and in case either party fails to select an appraiser, the same shall be selected by the officer holding the execution.

252. Schedule and appraisement: SEC. 4. Such appraisers shall proceed forthwith to make a schedule of the real and personal property selected by the debtor, describing the real estate by metes and bounds, and the personal property by separate items, affixing to each the value they may agree upon; and they, or a majority, shall affix to the schedule so made, an affidavit in substance as follows: "We, the undersigned, swear that, in our opinion, the above is a just valuation of the property therein described."

253. Return of officer; re-appraisement; cost: SEC. 5. Such schedule shall be delivered to the officer holding the execution or other process, and shall be by him returned with such execution or other process, and made a part of such return: *Provided*, That all second or subsequent appraisements, under this act, shall be at the cost of the party or parties asking the re-appraisement, unless the property of the debtor, at the time of the re-appraisement, is appraised at enough over and above the legal exemption to meet said costs.

254. Debtor to pay appraiser's fee: SEC. 6. Each appraiser, for his services, shall be allowed the sum of fifty cents, to be paid by the execution debtor.

255. **Duty of officer, when personalty only is claimed:** SEC. 7. If the debtor claim as exempt from execution personal property only, the officer holding the execution shall cause the same to be appraised and set apart to the debtor, and shall proceed to sell such other property, if any, as may be liable to the execution, according to law.

256. **Duty, when claim includes personalty and realty:** SEC. 8. If the claim of the debtor, as exempt from execution ,include both real and personal property, the officer holding the execution shall proceed to have the personal property appraised and set apart to the debtor, and then to have the real property claimed appraised, and if the amount of both appraisements exceed six hundred dollars, the debtor may, within sixty days thereafter, pay the excess or an amount sufficient to satisfy the execution; but if he fail to do so, the officer shall proceed to sell the real property as other real property is sold on execution, if the execution authorize the sale of such property. In making the sale, he shall receive no bid unless it exceed the difference between six hundred dollars and the appraisement of the personal property so set apart to the debtor. If the officer sell the real property, he shall pay over to the debtor the amount of said difference, and of the remainder apply upon the execution enough to satisfy it, and pay the balance, if any, to the debtor, or to such other party as may be entitled to it.

257. **Duty, when claim is for realty only:** SEC. 9. If the debtor claim as exempt from the execution real property only, it shall be appraised; and if its appraised value exceed six hundred dollars, it shall be sold, if there is a bid for more than six hundred dollars. If sold, the officer shall pay to the debtor six hundred dollars, and the remainder of the purchase-money shall be disposed of as provided in the last preceding section.

258. **Real property, how divided:** SEC. 10. In all cases in which real property is claimed as exempt from sale on execution, and said real property is susceptible of division by metes and bounds without material injury thereto, it shall be so divided as to exempt the principal dwelling-house or homestead of the debtor.

259. **Debtor must make and deliver a schedule:** SEC. 11. Before a debtor shall receive the benefit of the exemption provided by this act, he shall make out and deliver to the officer holding the execution a schdule of all his property, as now required by law, in case an exemption from sale on execution is claimed.

[In force since July 5, 1861.]

260. **Verified schedule required:** SEC. 1. Before any person shall be entitled to the benefit of the provisions of the above recited act, he shall make out and deliver to the sheriffff or othe rofficer having the writ, an inventory of all of his or her real estate, within or without this state, money on hand or on deposit within or without this state, rights, credits, and choses in action, and all personal property of every

description whatever belonging to him or in which he had any interest at the date of the issuing of the writ, and make and subscribe an affidavit to the same that such inventory contains a full and true account of all such property as required in this act to be set out in the said inventory, had or held by him at the time such writ was issued; and if any such property has been disposed of by him since the issuing of the writ, such affidavit shall show that fact, and how the same has been disposed of, and what disposition he has made of the proceeds; and until such inventory and affidavit shall be furnished to such officer, he shall not set apart any property to the execution defendant as exempt from execution.

[Act of May 31, 1879, continued.]

261. Wife may act in husband's absence: SEC. 12. In any case when the execution defendant is absent from this state, or shall absent himself from his home, and an attachment or execution shall be directed against his property, his wife may make out and verify the schedule of his property, and claim and receive for him the exemption provided in this act, and claim and exercise all the rights which would belong to her husband were he present.

262. When husband's mortgage of realty invalid: SEC. 13. No mortgage or sale of any real estate exempted under the provisions of this act shall be valid if executed by a married man, unless the mortgage or deed be signed and acknowledged by the wife in due form of law.

263. No exemptions against mechanics' liens, etc.: SEC. 14. The exemption under this act shall not affect any laborer's or mechanic's lien, nor lien for the purchase-money of the real property exempted, nor exempt any property from taxation or from sale for taxes.

264. Levy and offer to sell: (Relates to duties of sheriff.)

265. Household goods to value of one hundred dollars exempt from levy and sale for taxes: * * * * * * That nothing in this section shall authorize the treasurer in any county in this state to levy upon or sell for delinquent taxes the household goods of any person, where the household goods of such person do not exceed the value of one hundred dollars, as shown by the assessment list of said person for the year for which said taxes are delinquent. [7332.]

CHAPTER 10.

Fences.

I. Lawful fence defined.
II. Trespassing animals.
III. Law of estrays.
IV. Partition fences.
V. Fences on overflow lands.
VI. Hedge fences.
VII. Fences along railroads.

I. Lawful Fence Defined.

266. A lawful fence defined: SEC. 1. Any structure, hedge or ditch, in the nature of a fence, used for purposes of inclosure, which is such as good husbandmen generally keep, and as shall, on the testimony of skillful men, appear to be sufficient, shall be deemed a lawful fence.

II. Tresspassing Animals.

[In force since July 2, 1877.]

267. Trespassing Animal: SEC. 2. If any domestic animal break into an inclosure or wander upon the lands of another, the person injured thereby shall recover the amount of damage done, provided, that in townships where, by order of the board of county commissioners, said domestic animals are permitted to run at large, it shall appear that the fence through which said animal broke was lawful; but where such animal is not permitted to graze upon the uninclosed commons, it shall not be necessary to allege or prove the existence of a lawful fence in order to recover for the damage done.

268. Tender or offer to confess: SEC. 3. If, before trial, the owner of such tresspassing animal shall have tendered to the person injured any costs which may have accrued, and also an amount, in lieu of damage, which shall equal or exceed the amount of damages afterward awarded by the court or by a jury, or shall offer, in writing, to confess judgment for the same, and if, notwithstanding, the said injured person, refusing the said offer, cause the trial to proceed, he shall pay costs, and recover only the damages awarded.

269. Taking up as an estray: SEC. 4. When any domestic animal shall break into the inclosure of any person, such person, without regard to the season of the year, may take up such animal as if an estray, whether the owner be known to him or not, and shall proceed as provided by law of estrays, except as herein provided.

NOTE: — Animals can only be taken up and detained as trespassing animals when they break into an enclosure.

270. **Notice to owner:** SEC. 5. Such taker-up shall, within twenty-four hours after such taking-up, give notice to the owner of such animal, if known, and he can be immediately found.

271. **Assessment of damages:** SEC. 6. Such taker-up, before posting or advertising, shall procure from two disinterested freeholders, an examination and assessment of damages, with a certificate of the same, including reasonable pay for such assessment. [7366.]

272. **What to be specified in notice:** SEC. 7. The fact of trespass in the inclosure of the taker-up and the damages assessed, including pay for assessing, shall be specified in such notice or advertisement.

273. **Duty of owner, before reclaiming:** SEC. 8. The owner shall not be entitled to demand the trespassing estray from such taker-up, unless he proceed, as in case of estrays, to prove his property and pay costs allowed in the case of estrays, and also damages and the costs of assessment.

274. **If damages are controverted, trial.** SEC. 9. If the owner of the estray, at any time within five days after he has had notice of assessment of damages, controvert, before any justice of the township, the amount of damages or deny such trespass, the cause shall be docketed for trial.

275. **Trial and judgment:** SEC. 10. Either party may demand a jury; and such trial shall proceed, and judgment be rendered and execution issue, as in other cases.

276. **Damages against owner; costs:** SEC. 11. If damages be assessed on such trial, such damages and all costs must be paid by the owner before he recovers his property.

277. **Judgment against taker-up:** SEC. 12. If the verdict or finding be that the trespass was not committed by the property taken up, judgment shall go against the taker-up for all costs and for such damages as may be assessed.

278. **Sale of animal; rights of taker-up:** SEC. 13. When a trespassing estray is sold, the taker-up, in addition to the usual cost and allowances in the case of estrays, may retain, out of the value of such estray, the damages sustained by such trespass and the costs of their assessment.

279. **When fence unlawful:** SEC. 14. In case a trespassing estray is taken up, and the court or jury find the fence not lawful, the animal shall be released and the occupant of the inclosure shall pay costs and damages.

III. Law of Estrays.

[In force since May 6, 1853.]

280. **Advertising:** SEC. 1. Any person who shall take up any estray horse, mule, ass, sheep, hog, cattle or goat [or any boat] or other article of value adrift, shall, within five days thereafter, advertise the

same, in writing, in three of the most public places in the township where such property is taken up, stating the time of taking-up, and giving a particular description.

281. **Report to justice; appraisement:** SEC. 2. If, within fifteen days after taking up, the owner shall not have claimed such estray property, the taker-up shall report the same to some justice of the peace in the township, who shall issue his warrant to three householders of the neighborhood, not of kin to the taker-up (unless they can not be otherwise procured), directing any two of them to appraise such property; whose duty it shall be to appraise the same, and make report in writing to such justice, clearly describing the property, and giving their valuation thereof, and shall, under oath, declare that said appraisement and description were made without partiality, favor or affection.

[In force since August 17, 1855.]

282. **Fee of appraisers:** SEC. 1. Each and every appraiser appraising property, as in the preceding section provided, shall have for his services, as such appraiser, the sum of fifty cents, to be paid as other expenses in taking up estrays.

[Act of May 6, 1853, continued.]

283. **Oath of taker-up:** SEC. 3. The taker-up shall, at the time of making such report, make oath before such justice, that the marks, brands or appearance of such property have not been altered by him, nor by any other person to his knowledge, since the same became estray or adrift, other than may, in his written report, have been stated.

284. **Impounding:** SEC. 4. The taker-up of any unclaimed estray horse, mule or ass above the age of two years, shall take the same to the pound of the proper county (if there be one) and keep the same therein from 11 o'clock a. m. until 3 o'clock p. m., of the first day of each of the two succeeding terms of the circuit court after the taking up of such estray.

285. **Justice's and clerk's duties:** SEC. 5. Any justice to whom estray property may have been reported, shall within ten days, transmit to the clerk of the circuit court a copy of the description and valuation thereof, together with the proper fee as hereinafter provided; and said clerk shall enter such description and appraisement in a book to be kept for that purpose.

286. **Advertising; fee:** SEC. 6. Estray property exceeding in value ten dollars, and property adrift exceeding in value ten dollars, shall be advertised in some newspaper of the county, if there be one, or, if not, in the paper in this state nearest thereto; and the clerk shall forward to the printer a copy of the register thereof, marked outside, "Estray paper," together with a fee of one dollar, out of which the printer shall pay postage.

287. When property vests in taker-up: SEC. 7. In all cases in which the provisions of this act shall have been complied with, property adrift not exceeding in value twelve dollars, unclaimed or unproven by the owner within ninety days after taking up, and other estray property, not exceeding in value ten dollars, and unclaimed or unproven by the owner within one year after taking up, shall vest in the taker-up.

288. When reported to justice: SEC. 8. Property taken up adrift, the appraised value of which exceeds twelve dollars, not claimed and proven within ninety days after taking up, or animals astray other than horses, mules or asses, the appraised value of which exceeds ten dollars, not claimed and proven within six months after taking up, shall be reported by the taker-up to some justice of the peace of the proper township within five days after the expiration of the time specified herein.

[In force since August 17, 1855.]

289. Sale by constable: SEC. 9...Such justice shall issue his warrant to some constable to sell the same at auction, giving ten days' notice in writing, of the time and place of sale, describing the property to be sold. And such constable shall, within five days after such sale, return such order and proceeds of sale to said justice, retaining one dollar for his services therein; and said justice shall immediately pay over to the county treasurer the proceeds of sale, after deducting the proper amount to be paid to the taker-up, as provided in this act, fifty cents for his own fee, and five cents for every mile that it is necessary for him to travel in making said return; and shall take from the treasurer duplicate receipts, one of which he shall file in the office of the clerk of the circuit court and one with the county auditor.

[In force since May 6, 1853.]

290. Animals worth over twenty dollars; sale: SEC. 10. Any horse, mule, or ass, taken up under the provisions of this act, the appraised value of which exceeds twenty dollars, and which shall remain unclaimed or unproven at the expiration of twelve months from the time of taking up, shall be, by the taker-up, delivered to the sheriff of the proper county on the first day of the term of the circuit court next after the expiration of such time, and shall be, by said sheriff, sold at public sale; and, after retaining one dollar for his services, and paying to the taker-up his charges, as provided in this act, said sheriff shall pay the proceeds of such sale to the treasurer of the county within five days thereafter, taking from the treasurer duplicate receipts, and filing one of the same in the clerk's office and the other with the county auditor.

291. Estray fund: SEC. 11...All sums paid to the county treasurer under the provisions of this act shall be, by him, entered to the credit of the county, under the head of estray fund.

292. Estray; pay of taker-up: SEC. 12...The taker-up shall be entitled for taking-up, for each horse, mule or ass, one dollar; each

head of meat cattle, fifty cents; each sheep, goat or hog, above six months old, ten cents; but where the owner reclaims and proves his property before the same is posted, the taker-up shall only be allowed half the above reward.

293. **Property adrift; pay of taker-up:** SEC. 13...The taker-up of property adrift shall be allowed a reasonable sum, to be determined by some justice of the peace of the township, but either the claimant or the taker-up thereof may, if they choose, have a jury to determine what amount shall be just and reasonable for taking up and taking care of such property. The justice, constable and jury shall be allowed the same fees as in other cases.

294. **Fees:** SEC. 14. The taker-up of property exceeding three dollars in value shall pay to the justice, at the time of reporting, fifty cents for the justice, fifty cents for the clerk, and one dollar for the printer where printing is required; but if under three dollars, the justice shall make no return to the clerk, and his fee shall be twenty-five cents only.

295. **Register of estrays:** SEC. 15. The clerk shall keep a register of estrays. Where several estrays or articles adrift are taken up by one person, there shall be only one entry and one adevertisement, one fee of the clerk and one of the justice.

296. **Pay for keeping property:** SEC. 16. Upon property sold or reclaimed, the taker-up shall be allowed such compensation for keeping such property as shall be, by the justice before whom the proper proceedings are had, deemed just and reasonable, and such taker-up shall keep account of the time any estray animal is kept by him, and make oath to the same.

297. **Services of animal:** SEC. 17. If any animal be taken up under the provisions of this act and worked by the taker-up, a reasonable compensation shall be allowed for the services of said animal, to be deducted from the keeping. The taker-up, if required, shall verify, under oath, the time he has worked said animal.

298. **Owner's reclamation:** SEC. 18...At any time before sale, the owner may have his property, by proving the same before the justice of the township where taken up and paying charges; and at any time within two years after sale, but not later, he may reclaim the money paid into the treasury, by proper proof before the county auditor.

299. **Place and time of taking up:** SEC. 19. No person shall take up any horse or stock except at his place of residence, or drive the same out of the woods and take them up; nor shall any animal be taken up between the first day of April and the first day of November, unless the same be found in the inclosure of the taker-up: *Provided, however,* That when any animal may be in the act of escaping from the owner, it may be taken up at any time, wherever found.

300. **Removal from county:** SEC. 20. The taker-up, until he become owner, shall not take, or suffer to be taken, out of the county any property taken up for more than three days at any one time.

Note.—For penalty see "Misdemeanors and Offenses."

301. **Fatted hogs:** SEC. 21. Fatted hogs taken up may, at the option of the taker-up, be killed one month after posting; but, in that case, the taker-up shall, forthwith after killing the same, pay their appraised value, deducting costs and charges (to be liquidated as in other cases) to the county treasurer, for the use of the owner.

302. **Stock hogs:** SEC. 22. Stock hogs taken up may, at the option of the taker-up, be by him paid for, six months after posting, at their appraised value, deducting costs and reward for taking up but no allowance for keeping the same.

IV. Partition Fences.

[In force since March 6, 1897.]

303. **Partition fences:** SEC. 1. That all fences now constructed and used by adjoining land-owners as a partition fence or fences unless otherwise specially agreed upon by such land-owners shall be deemed partition fences and shall be built, maintained, repaired and paid for as hereinafter provided.

304. **Cost apportioned; township trustee building; lawful fence:** SEC. 2. That all partition fences shall be built and kept in repair at the cost of the several land-owners whose lands are enclosed, separated by such fences, equally according to the number of rods or protection [proportion] thereof such land-owner may have along such line of fence whether his, her or their title be in fee-simple or a life-estate. That if any land-owner as above defined shall fail or refuse to compensate for building or repairing his, her or their proportion of fence, any land-owner interested in such fence may give notice in writing to such defaulting party, his agent, or tenant, to compensate for building or repairing their proportion of such fence and if after twenty (20) days' notice to such party, agent or tenant such fence is not compensated for, built or repaired, such interested land-owner may notify the township trustee of such township in which such fence is situated: *Provided,* That where the fence sought to be established or repaired [is] on a township line, in that case the owner or owners shall notify the trustee of the adjoining township of the one [in] which the owner lives, of the improvement he or they desire made, and such trustee shall have jurisdiction of such matters, unless disqualified as in this act provided, to estimate or compensate for such fence, the cost of building such fence or the cost of repairing the same as the case may be; and within a reasonable time after being so called upon so to do such trustee shall make out a written itemized statement of the due proportion of such defaulting land-owner, of compensation, the cost of building a new fence, or of making repairs as the case

may be, and deliver a copy thereof to such defaulting landowner, his agent, or tenant: *Provided,* That such trustee in estimating the compensation, cost of building a new fence, or repair of any fence shall adopt the plans and material for such fence as is most commonly used by the farmers of such township: *Provided,* That on land subject to overflow posts and wire only shall be used for fencing across such land subject to overflow: *Provided, further,* That if such trustee of such township is disqualified from acting in the premises by reason of relationship to any of the parties interested or is an interested party himself or otherwise disqualified to act, then it shall be lawful for the trustee of any other township who resides nearest to where such fence is situated to act in the premises: *Also, provided further,* That a lawful partition fence shall be a straight board and wire fence or a straight wire or a straight board fence, or a picket or hedge fence four (4) feet in height, a straight rail fence four and one-half (4½) feet high, a worm rail fence five (5) feet high, and all fences of every structure to be sufficiently tight and sufficiently strong to hold hogs, sheep, cattle, mules and horses.

305. **Letting of contract; certificate of cost; lien:** SEC. 3. After the expiration of twenty (20) days of the receipt of the statement herein provided for in section 2 of this act, to be made out by the township trustee aforesaid, if the defaulting land-owner, shall not have made compensation, built his share of the fence or made the proper repairs, as pointed out in the statement made by the trustee aforesaid, then said township trustee shall give notice of the letting such work, by written or printed notices, posted in not less than three of the most public places in the township where the fence is located, and shall at the expiration of said notice let said work to the lowest responsible bidder therefor, and take a bond from such successful bidder for the faithful performance of such contract, with sufficient solvent surety to such bond.

Upon the completion of said work under said contract, the township trustee shall give such contractor a certificate properly authenticated, showing the amount of work done, material used, and kind of material used, and the contract price for such work and material, and the whole amount due such contractor, also the amount due the trustee for his services, with a description of the land of the defaulting land-owner, and if the sum due is not paid upon demand made upon the defaulting land-owner, his agent or tenant the said certificate may be placed on record in the recorder's office in the county in which such fence was constructed or repaired and it is hereby made the duty of the recorder of such county to record the same in the mechanics' lien record of such county and to properly index the same, and for so doing he shall receive a fee of twenty-five cents therefor; and said amount named in said certificate, with the fees due the township trustee shall be a lien upon the real estate described in said certificate from the time of the commencement of the work for which it was given. And if the same is not paid

by the said land-owner such lien may be foreclosed at any time within twelve (12) months from the date of recording the same, by such contractor under the same rules and regulations that mechanics' liens are foreclosed and a sale of the real estate made under the same rules and regulations: *Provided*, That the fees due the township trustee for his services shall be separately stated in such payment and remain his property, and if such contractor does not have recorded and foreclosed such lien, the trustee shall have a right to do so, and all payment of fees due the trustee for services rendered under this act must be made to him or his legal representatives.

306. **Liability of trustee:** SEC. 4. There shall be no personal liability upon the trustee for any contract made under this act, but the contractor shall rely upon his lien exclusively for his compensation and the said trustee, shall be allowed the same per diem for services rendered under this act as he is allowed for other services, as trustee of the civil township.

307. **Persons exempted from act:** SEC. 5. Persons owning land not enclosed by fence to retain stock shall not be required to make or maintain a partition fence.

308. **Construction of act:** SEC. 6. That this act shall be liberally construed in favor of the objects and purposes for which it is enacted.

[In force since May 6, 1853.]

309. **Payment for partition fence:** SEC. 20. When, by inclosure of uninclosed land a fence already erected shall become a partition fence, the person making such inclosure shall pay to the owner of the fence the value of one-half of the same, as estimated by the owner.

310. **Action; tender:** SEC. 21. If he refuse, the owner may bring suit for the same. But if the person making the inclosure shall have tendered to him before trial an amount equal to or larger than the damages awarded, together with costs accrued up to the date of tender, the owner of the fence shall pay costs, and have only the damages assessed.

311. **Joining fences:** SEC. 22. No person inclosing land that has heretofore been open shall join his fence to that of another, except by consent. If no consent be given, each shall give one-half the width of a lane, or a reasonable distance, for the erection of a second fence.

[In force since August 24, 1857.]

312. **Notice before removing partition fence:** SEC. 23. When any party shall cease to use his lands, or shall lay open his inclosures, he shall not take away any part of his fence which forms a partition fence between him and the inclosure of any other person, until he shall have first given six months' notice to such person or persons as may be interested in the removing of said fence, of his intention to remove the same.

[In force since May 6, 1853.]

313. **Fence erected by mistake:** SEC. 24. When any person shall, by mistake, erect any fence on the land of another, and when, by a line legally determined, that fact is ascertained, such person may enter upon such premises and remove the fence which he may have made thereon, within six months after such line has been run as aforesaid, upon his first paying, or offering to pay, to the other party reasonable damages for injury in passing over the soil in making such removal.

314. **No removal while crop is exposed:** SEC. 25. When the fence to be removed forms any part of a fence inclosing a field of the other party, with a crop thereon, such first person shall not remove the same, so as to expose such field, until such crop shall have been gathered and removed or secured from injury, or might with reasonable diligence so have been gathered and secured; then he may immediately remove such fence and materials, although more than six months have elapsed since such division line was run.

V. Fences on Overflow Lands.

315. For laws relating to fences on overflow lands, see 1 R. S. 1852, p. 318; Acts of 1875, p. 104, and Act of March 14, 1877, relating the recording of fence marks and the reclamation of marked fencing.

VI. Hedge Fences.

[In force since June 3, 1891.]

316. **Trimming of hedges:** SEC. 1. That all hedge or live fences along the line of any highway within the state of Indiana shall be cut and trimmed down to the height of not to exceed five feet, once in each calendar year.

317. If the owner of the land does not trim the hedge, it is the duty of the road supervisor to do so and recover the cost from such owner.

[In force since June 28, 1895.]

318. **Trimming partition hedge fences:** SEC. 1. That all hedges or other live fences along the lines dividing lands owned by different persons in the state of Indiana, shall be cut and trimmed down to the height of not exceeding five feet and to a width of not exceeding three feet once in each calendar year.

NOTE: — Upon complaint of an owner of land adjoining such fence to a township trustee, that any other owner of land adjoining said fence has neglected to trim the same, it then becomes the duty of such trustee to give 30 days' notice to the delinquent owner, and upon failure thereafter of such owner to trim, the trustee shall cause such fence to be trimmed and recover the cost thereof from such delinquent landowner.

NOTE: — For law regulating the planting of hedge fences along highways see chapter on "Roads."

VII. Fences Along Railroads.

[In force since April 8, 1885.]

319. The owner of lands separated by a railway may construct driveways and wagon ways across such railway tracks, and such owner shall erect gates at such crossings which gates he shall keep locked when same are not in use. It is the duty of every railroad company to fence its right of way and to construct cattle-guards at public crossings. On failure of railroad company to erect fences the adjoining land owner may do so and collect the expense thereof from the railroad company. The land owner may repair fence at the expense of the railroad company when the company fails to make necessary repairs.

The law specifies the nearest freight agent of the railroad company as the proper representative of the company upon whom notices (in writing) relating the building and repairing of fences, shall be served.

CHAPTER 11.

Fruit Trees, Fruits, Shrubs and Vines.

I. Fraud in sale of fruit trees.
II. Regulations for prevention of disease, etc.
III. Inspection of nurseries.
IV. Fruit trees near boundary line, rights of adjoining owners.

[In force since April 15, 1905.]

I. Fraud in Sale of Fruit Trees.

320. Fruit trees, false representation in sale of: SEC. 1. That it shall be unlawful for any person, persons, firm or corporation, acting either as principal or agent, to sell to any person, persons, firm or corporation any fruit tree or fruit trees representing same to be of a certain kind, variety and description and thereafter to deliver to such purchaser in filling such order and in completing such sale a fruit tree or fruit trees of a different kind, variety or description than the kind, variety or description of such fruit tree or fruit trees so ordered and sold.

321. Penalty: SEC. 2. Any person violating any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty ($50) dollars nor more than five hundred ($500) dollars.

322. Limitation of time for prosecutions: SEC. 3. Prosecutions under this act may be commenced at any time within five years from the time of the delivery of such fruit tree or fruit trees mentioned in section 1.

II. Regulations for Prevention of Disease, Etc.

[Act approved March 5, 1909.]

[Sec. 1 of Act relates to other matters and is omitted.]

323. San Jose scale; report: SEC. 2. The state entomologist shall devote his entire time to the discharge of the duties of his office. He shall co-operate with any local horticultural society or individual in the state in any efforts to locate, check or eradicate the San Jose scale or any insect pest injurious to orchard or field crops, or to shade and ornamental trees. He shall also assist in identifying and combating fungus or other destructive diseases to plant life. In the discharge of his duties he shall go to any part of the state where his services are requested and his duties will permit. He shall immediately upon taking

his office prepare and cause to be published, and from time to time thereafter, in pamphlet form, all available information relating to San Jose scale and other injurious plant diseases, with the methods of detecting the same and the modes of treatment. He shall send a copy of such pamphlet to each township trustee, city clerk, public school teacher and any other citizen of the state applying for the same for the purpose of informing the people of the history, habits and methods of eradicating injurious insect and plant diseases. He shall make an annual report to the governor of the work done by his office and with other matters contained in that report shall be a list of all townships in the state where the San Jose scale is known to exist.

NOTE: — The remaining seven sections of said act relate to nursery inspection by the state entomologist.

III. Inspection of Nurseries.

[In force since March 1, 1899.]

324. Inspection of nurseries: SEC. 1. That all nurseries in Indiana, where trees, shrub, vines, plants or other nursery stock are grown and offered for sale, shall be inspected by the state entomologist at least once each year, not earlier than June 1st, nor later than October 1st, at such time as he may elect, and he shall notify in writing, the owners of such nurseries, the secretary of the state board of agriculture, the director of the state agricultural experiment station, and the president of the state Horticultural Society, of the presence of any San Jose scale or other destructively injurious insects or fungi on trees, shrubs, vines, plants or other stock of such nurseries, and shall notify in writing the owner of any effected stock that he is required on or before a certain day to take such measures for the destruction of such insects or fungus enemies of nursery stock as have been shown to be effectual for this purpose.

NOTE: — Secs. 2 to 7 relate to the state entomologist and his duties, and to the duty of owner (in Indiana) of nursery stock to furnish certificate with each shipment certifying same to be free from disease, etc.

325. Notice of disease, remedies, penalty: SEC. 8. Whenever a nurseryman, fruit grower, or agriculturist in this state shall know or have good reason to believe that his trees, shrubs, vines, or plants are affected with San Jose scale, yellows, rosette, or other destructive insect or fungus enemies, he shall have the privilege and it shall be his duty to notify the state entomologist, who shall proceed in person or by his assistant, to examine the same without delay, and advise the proper remedies for the destruction of such insect or fungus enemies that may be present. In case the owner or owners, or person in control of, of said affected trees, shrubs, vines or other plants do not apply the proper remedies recommended by the said state entomologist within a certain specified time, said owner or owners, or persons in control of, shall be

liable to a fine of not more than twenty-five dollars ($25.00), nor less than ten dollars ($10.00) and costs, in the judgment of the court, for every such offense, the fine to be recoverable in the same manner as that provided for in section 5 of this act: *Provided,* That in case of objection to the findings of the state entomologist, an appeal may be taken to the circuit court, whose decision shall be final; said appeal must be taken within three (3) days and shall operate as a stay of proceedings until it is heard and decided.

NOTE: — The remaining three sections of said act relate to the duty of nurserymen outside the state of Indiana to furnish with each package a certificate of free from San Jose scale and other diseases, and to the duty of railroad companies, etc., to report to state entomologist any failure to furnish such certificate on packages of nursery stock shipped into Indiana.

IV. Fruit Trees on or Near the Boundary Line; Rights of Adjoining Owner.

326. The owner of the land on which a fruit tree stands is the owner of the whole tree and the fruit thereof although the roots and branches of such tree may grow across and hang over the boundary line upon the land and domain of another. The fruit although growing upon branches projecting over the line and upon ripening falls upon the ground of the adjoining owner, belongs to the owner of the land upon which the body of the tree stands, and he may pick it from such projecting branches or go upon the adjoining owner's land for such fruit after it ripens and falls, and is not a trespasser by such act. The only lawful right or privilege which such adjoining owner may exercise with reference to such tree is, that he may cut off the branches up to the line; but he is a trespasser if he remove the fruit from such branches before severing them. These views of the law are sustained by the decisions in the following cases: The cases cited where the body of a tree stand *upon* the boundary line when applied to fruit trees would seem to lead to the conclusion that the adjoining owners have an equal right in the tree, and, consequently an equal right in the fruit.

NOTES: — 1. The owner of the tree is not entitled to the fruit of a tree growing on the land of another; although the branches overhang his land. Hoffman vs. Armstrong, 48 N. Y. 201. In this case the owner of the tree attempted to pick cherries on branches hanging over the line when the owner of the adjoining property assaulted the picker. The court instructed the jury that owner of the tree owns the whole of it.

When an apple tree stood six feet from the division line and its branches and roots crossed the line, the tree and the fruit were the sole property of the owner of the land on which the tree stood, and the party over whose land the branches projected across the line could not pick the fruit without being guilty of trespass. Skinner vs. Miller, 38 Vt. 115.

Where the tree stands four feet from the line and some of the branches overhang adjoining land, the fruit on those branches belongs to the owner of the tree,

and the owner of the land over which they hang is a trespasser if he removes the fruit. If the branches are a nuisance, he has a right to remove them. Lyman vs. Hale, 11 Conn. 177.

If the fruit of a tree belonging to A fall upon the land of B, and A go upon the land of B to take it away, an action of trespass does not lie, because the falling of this there could not be prevented. Miller vs. Fawdry, Latch, 120 dictum.

2. A tree standing so nearly upon the boundary line that portions of its body extend into each, the same is the property in common of the landowners. And neither of such owners is at liberty to cut the tree without the consent of the other, nor, to cut away the part which extends into his land, if thereby injures the common property in the tree. 1 Washburn on Real Property 7 § a, 29 h, R. A. 585.

A tree standing on the boundary line is the common property of both parties whether marked or not, and trespass will lie, if one attempt to destroy it without the consent of the other. Griffin vs. Bixby, 12 N. H., 454.

CHAPTER 12.

Game Laws.

Birds, Fish and Game.

I. Ownership in game and wild animals.
II. Laws for protection of game.
III. Laws regulating fishing.
IV. Fish-ladders.

I. Ownership in Game and Wild Animals.

327. The ownership of game animals and birds is in the State in its sovereign capacity, and the question of possession or ownership by an individual is not one of public right but of public policy, and may be regulated and restrained by legislation enacted for the common good. —Fitton vs. State, 1 N. P. Ns. 133. Wild animals when captured and under control of the capturer are his property..—65 N. C. 315. Pursuit alone vests no property or right in the huntsman, nor even when accompanied with wounding unless the wounding be such as to bring the animal within the power or control of the hunter. To assert and maintain the right of property in a wild animal there must be occupancy which means actual corporal possession, power or control of the animal; otherwise there is no property. 2 Braeton, Chap. 1, page 8; 3 Cai 177; 20 John 75, 4 Puffen, Chap. 6. When wild animals have been killed and labor has been bestowed upon their carcases, the product of that labor is property and subject to larceny. 5 N. H. 203.

II. Laws for Protection of Game.

328. **Deer, turkey and pheasant; killing or having in possession; penalty:** SEC. 1. Whoever shoots or destroys or pursues for the purpose of shooting or destroying or has in his possession, dead or alive, except for breeding purposes any wild deer, buck doe or fawn, wild turkey, or any pheasant of any species or kind, killed or bred in this state, shall, on conviction, be fined not less than fifty dollars nor more than two hundred dollars for each wild deer, buck, doe, fawn, wild turkey or pheasant of any species or kind so shot or destroyed, pursued or had in his possession: *Provided*, That the provisions of this section shall not apply to any person or persons owning or having under his domain or control, any deer, buck, doe or fawn, bred or raised in any private deer park. [2512]

[Act approved March 6, 1909.]

329. **Unlawful to kill certain game birds and pheasants:** SEC. 1. That it shall be unlawful for any person in the State of Indiana for and during the term of six (6) years from and after the passage of this act to injure, take, kill, expose or offer for sale, or have in possession, except for breeding purposes, any prairie chicken, any ring-neck Mongolian pheasant, any green Japanese pheasant, any copper pheasant or scholmeringer, any tragopan pheasant, silver pheasant, golden pheasant, Hungarian pheasant or Hungarian partridge; or to hunt upon any game preserve organized and stocked with any of the above mentioned birds, by the commisioner of fisheries and game: *Provided,* That any land owner living within the territory of the preserve may be permitted to hunt squirrel and rabbits on his own land only. [As approved March 6, 1909.]

330. **Penalty:** SEC. 2. Any person violating or attempting to violate the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than twenty-five dollars, nor more than one hundred dollars. [As approved March 6, 1909']

331. **Quail; netting or trapping:** Whoever nets or traps, or attempts to net or trap any quail; or whoever has in his possession any net or trap for the purpose of netting or trapping any quail at any time, shall, on conviction, be fined not less than ten dollars nor more than fifty dolars for each offense. Each act of netting or trapping, or attempting to net or trap quail, or each day's possesion of such net or trap, shall be deemed and held to be a separate and distinct offense and punishable as such.

332. **Quail; grouse and prairie chicken; open season:** It shall be unlawful for any person, firm or corporation to hunt, shoot or kill, pursue for the purpose of shooting or killing, or have in his or its possession, dead or alive, except for breeding purposes, and then only by permission of the commissioner of fisheries and game, and quail, ruffed grouse, prairie chicken or pinnated grouse at any time from the first day of January of any year to the tenth day of November of the same year. Whoever shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined ten dollars for each quail, ruffed grouse, prairie chicken, or pinnated grouse so hunted, shot, killed, pursued or possessed.

333. **Quail; number can shoot in one day:** Whoever shoots, kills or has in his possession more than fifteen quail in any one day between the tenth day of November of any year and the first day of January of the succeeding year, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined ten dollars for each quail so shot, killed or possessed in excess of fifteen; *Provided,* That any person

having hunted three days or more in succession may have a total of not to exceed forty-five quail, killed by himself during such hunt.

334. **Quail; penalty for selling:** Whoever sells, or offers for sale, directly or indirectly, at any time, any quail, shall, on conviction, be fined ten dollars for each quail sold or offered for sale.

[Act approved March 6, 1909.]

335. **Wild goose, duck, brant; open season:** SEC. 1. Whoever shoots, kills, or pursues for the purpose of shooting or killing or whoever has in his possession any wild goose, wild duck, brant or other waterfowl at any time from the fifteenth day of April of any year to the first day of September of the same year, or whoever at any time between sunset of any day and sunrise of the succeeding day shoots, kills, pursues for the purpose of shooting or killing any wild goose, wild duck, brant or other waterfowl or whoever at any time pursues any wild goose, wild duck, brant or other waterfowl with or by means of a naphtha, electric or steam launch or boat or any other kind of boat except a rowboat or push boat, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined ten dollars for each wild goose, wild duck, brant or other waterfowl so shot, killed, possessed or pursued. [As approved March 6, 1909.]

336. **Wild duck, geese, etc.; number which may be killed in one day; penalty for violation:** SEC. 2. Whoever shoots or kills, or whoever has in his possession more than fifteen wild ducks, wild geese, brant, or water fowl in any one day at any time from the first day of September of any year, to the 15th day of April of the succeeding year, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined $10.00 for each wild goose, wild duck, brant or other water fowl so shot, killed or possessed in excess of fifteen: *Provided*, That any person having hunted three days or more in succession, may have a total of not to exceed forty-five wild geese, wild ducks, brants or other water fowl, killed by himself during such hunt. [As approved March 6, 1909.]

337. **Squirrel season:** Whoever shoots or destroys, or pursues for the purpose of shooting or destroying, or has in his possession any wild squirrel, from the first day of November of any year to the first day of July of the succeeding year, shall, on conviction, be fined ten dollars for each squirrel so shot, destroyed, pursued or had in his possession. [2721]

338. **Game birds defined:** Whoever kills, traps or has in his posession any wild bird, or whoever sells or offers the same for sale, or whoever destroys the nest or eggs of any wild bird, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than twenty-five dollars: *Provided*, That the provisions of this section shall not apply to the following named game birds: The anatidae, commonly called swans, geese, brant,

river and sea duck; the rallidae, commonly called rails, coots, mud-hens and gallinules; the linicolae, commonly called shore birds, surf birds, plover, snipe, woodcock, sandpipers, tattlers and curlew; the gallinae, commonly called wild turkeys, grouse, prairie chickens, quail and pheasants; nor to English or European house sparrows, crows, hawks or other birds of prey. Nor shall this section apply to person taking birds, their nests or eggs, for scientific purposes, under permit, as provided in the next section. [2522]

339. **Permits to collect birds, nests or eggs for scientific purposes; how obtained; bond:** Permits may be granted by the commissioner of fisheries and game to any properly accredited person, permiting the holder thereof to collect birds, their nests or eggs for strictly scientific purposes. In order to obtain such permit the applicant for the same must present to such commissioner written testimonials from two well-known scientific men certifying to the good character and fitness of such applicant to be entrusted with such privilege, and pay to such commissioner one dollar therefor, and file with him a properly executed bond in the sum of two hundred dollars, payable to the state of Indiana, conditioned that he will obey the terms of such permit, and signed by at least two responsible citizens of the state as sureties. The bond may be forfeited, and the permit revoked upon proof to the satisfaction of such commissioner that the holder of such permit has killed any bird or taken the nest or eggs of any bird for any other purpose than that named in this section. [2523]

340. **Hunting with dog, ferrets or firearms upon enclosed lands without consent of owner, unlawful; penalty:** Whoever hunts with dog or ferrets or whoever hunts or shoots with any kind of firearms, upon any land without first securing the consent of the owner or tenant thereof, shall, on conviction, be fined not less than ten dollars nor more than twenty-five dollars. [2524]

341. **Injury to property while hunting; penalty:** Whoever, while hunting upon the lands of another, carelessly or wantonly injures any cow, horse, hog, sheep, chicken, turkey, duck, or other property, either real or personal, of any person, shall, on conviction, be fined not less than the value of the property destroyed, or amount of the injury done, nor more than double the value of the property destroyed, or amount of the injury done. [2525]

342. **Hunting wild birds, rabbits or game on Sunday unlawful; penalty:** Whoever hunts or shoots wild birds, rabbits, or any species of game with any kind of firearms on the first day of the week, commonly called Sunday, shall, on convicition, be fined not less than one dollar nor more than fifty dollars. [2526]

343. **Woodcock; when unlawful to kill or have in possession:** Whoever hunts, shoots, kills or has in his possession, any woodcock at any time from the first day of January of any year to the first day

of July of the same year shall be guilty of a misdemeanor, and upon conviction thereof shall be fined ten dollars for each woodcock so hunted, shot, killed or possessed. [2527]

344. **Closed season as to all game except waterfowls:** It shall be unlawful to hunt any kind of game except wild duck and other water fowl, at any time from October first of any year to November tenth of the same year. Any one guilty of violating any of the provisions of this section shall, on conviction, be fined not less than five dollars nor more than fifty dollars for each offense, and every day this section is violated shall constitute a separate and distinct offense. [2528]

345. **Residents must procure license before hunting:** It shall be unlawful for any person who is a resident of the state of Indiana to hunt anywhere within the state of Indiana any of the wild animals, fowls or birds that are protected by law during any part of the year without first procuring a license to do so, and then only during the respective periods of the year when it shall be lawful to do so. In all counties of this state having a population of less than one hundred and fifty thousand inhabitants, according to the last preceding census, it shall be the duty of the clerk of the circuit court of any such county to issue such license to any resident of such county upon application of such person. Such license shall contain a description of the age, weight, height, color of hair, color of eyes, complexion, and distinctive mark or marks of such licensee, and shall be signed by him in ink. Such license shall contain the signature and seal of the commissioner of fisheries and game, shall be countersigned by the clerk issuing same, and shall be good for one year from date of issue. In all counties of this state having a population of more than one hundred and fifty thousand inhabitants, according to the last preceding census, the commissioner of fisheries and game, or some resident of any such county, appointed by the said commissioner, shall issue hunting licenses as described above, to the residents of such county. The commissioner of fisheries and game shall furnish all necessary blank applications and licenses to the said clerks and appointees, and the commissioner of fisheries and game shall give to any such appointee as herein provided, a certificate showing said appointee to be authorized to issue such hunting license. Before the issuance of any such license the applicant shall pay to such clerk, commissioner of fisheries and game or his appointee, the sum of one dollar, which shall be paid to the treasurer of state by such clerk, commissioner or appointee, every thirty days, on the first day of each calendar month, as a part of the fish and game protective fund as described in section 626 of this act. Such clerk and appointee shall report to the commissioner of fisheries and game every thirty days, informing him of the number of licenses issued by such clerk or appointee during the preceding thirty days, the names of the licensees and the number of blank licenses remaining in his possession. Any person securing such license shall have the same in his possession when hunting, and

shall show same to the commissioner of fisheries and game or his deputy upon request. The commissioner of fisheries and game shall use not less than one-third of all moneys received from sale of licenses as herein provided, in the purchase and distribution of live quails and other species of live game for the purpose of restocking this state with such live game: *Provided,* That no hunting license shall be issued to any person under the age of fourteen years unless the application is indorsed in writing by the parent or guardian of such applicant: *Provided, further,* That the resident owner or owners of farm lands, their children living with them, or their tenants, may hunt upon the lands of which he or they are the *bona fide* owner, owners or tenants, during the respective seasons of the year when it shall be lawful to hunt the various species of game, without procuring such hunting license: *Provided, further,* That any *bona fide* resident of the state of Indiana may hunt rabbits in the township in which he resides without securing such hunting license. Whoever shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars, and every day this section or any of its provisions is violated shall constitute a separate and distinct offense. [2529.]

346. **Carriers carrying game out of state:** It shall be unlawful for any railroad company, express company, or other common carrier, or other person, to transport, take or carry or receive for the purpose of transporting taking or carrying beyond the limits of this state, any wild deer, buck, doe or fawn, any quail, wild duck, brant, wild goose, or other water fowl, ruffed grouse, pinnated grouse, prairie chicken or woodcock wild turkey, or any pheasant of any kind or species (except as provided in the next section). Any railroad company, express company or other common carrier, or other person violating any of the provisions of this section shall, on conviction, be fined one hundred dollars for each such wild deer, buck, doe or fawn transported, taken or carried or received for the purpose of transportation, taking or carrying beyond the limits of this state; fifty dollars for each pheasant of any kind or species, or wild turkey so transported, taken or carried beyond the limits of this state, and ten dollars for each quail, wild duck, brant, wild goose, or other wild water fowl ruffed grouse, pinnated grouse, prairie chicken or woodcock transported, taken or carried or received for the purpose of being transported, taken or carried beyond the limits of this state. [2530.]

347. **Non-residents must procure license before hunting, etc.:** It shall be unlawful for any person who is a non-resident of the state of Indiana to hunt any of the wild animals, fowls or birds that are protected by law during any part of the year, without first procuring a license to do so, and then only during the respective seasons of the year when it shall be lawful so to do. Such license shall be procured in the following manner, to wit: The applicant shall fill out a blank application to be

furnished by the clerk of the circuit court of any county in the state, setting forth the name, place of residence, occupation, age, height, weight, complexion, color of hair, color of eyes, and any distinctive mark or marks of the applicant, which application shall be sworn to before some person authorized to administer oaths in the state of Indiana or the state in which the applicant resides. Upon the presentation of such application, together with a photograph of the applicant, to the clerk of the circuit court of any county in this state,, such clerk shall issue to applicant a license to hunt anywhere in the state of Indiana. Such license shall have attached thereto the said photograph of the licensee, shall be good for one year from date of issue, and shall be substantially in the following form, to wit:

State of Indiana, County of ————, ss:

This certifies that ————, a resident of ———— county, state of ————, has this day complied with the law authorizing the issuance of hunting licenses to non-residents of the State of Indiana, and is hereby authorized to hunt anywhere in the State of Indiana for the period of one year from this date.

Description of licensee: Age, — years; height, ——— feet ——— inches; weight, ——— pounds; complexion, ———; color of hair, ———; color of eyes, ———; distinctive mark or marks, ————————.

Witness the signature of the clerk of said county and the seal of the circuit court of said county this the ——— day of ————, 19—.

Clerk of ———— County Circuit Court.

Before the issuance of any such license the applicant shall pay to such clerk the sum of fifteen dollars and fifty cents, fifteen dollars of which shall be paid by said clerk to the treasurer of state as a part of the fish and game protective fund, as hereinafter provided, and fifty cents of which shall be reserved by the said clerk and disposed of as other fees of his office are disposed of. Any licensee under the provisions of this section is hereby authorized to kill and remove from this state not to exceed fifteen game birds of all kinds each day that he hunts in this state, which shall be carried openly for inspection, together with his license: *Provided,* That any licensee under this section who has hunted three days or more in succession may take beyond the limits of this state a total of not to exceed forty-five game birds of all kinds killed by himself during such hunt. Whoever shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more

than one hundred dollars, to which may be added imprisonment in the county jail for any period not less than thirty days nor more than sixty days. [2531.]

NOTE: — It is the duty of road supervisors to arrest or cause to be arrested all persons violating any of the laws for the protection of fish and game. Said supervisor is allowed a fee of five dollars to be taxed against each person convicted. Any such supervisor failing to discharge his duty in this respect is liable to a fine of not less than five nor more than twenty-five dollars. [Page 449, Acts of year 1889.]

III. Laws Regulating Fishing.

348. **Fish; Seines, traps or spears in possession:** Whoever has in his possession any seine, dip net, gill net, pond net, or other kind of net, spear, gig or trap or any part thereof except as otherwise provided in this section, shall, on conviction, be fined not less than five dollars nor more than two hundred dollars for each offense, to which may be added imprisonment in the county jail for any determinate period, and every day's possession of such articles, or any of them, shall constitute a separate and distinct offense under this section: *Provided,* This section shall not apply to persons who have in their possession nets, seines, traps or other fishing tackle for the purpose of taking fish from Lake Michigan, the Ohio river, or the Wabash river in so far as it is the boundary line between the states of Indiana and Illinois, except that persons having such nets, seines and other devices for use in any of the said waters, shall keep the same within two miles of such waters: *Provided, also,* That this section shall not apply to owner of private ponds who keep a seine for use only in such ponds. *Provided, also,* That this section shall not apply to minnow traps or minnow seines not more than twelve feet long, four feet deep and the meshes of which shall not be larger than one-fourth of an inch. [2532.]

349. **Destruction of seines, traps and spears:** It shall be the duty of the commissioner of fisheries and game and his deputies to seize and destroy any seine more than twelve (12) feet long and four (4) feet wide, dip net, gill net, set net, trammel net, pond net, cast net or other kind of net, trap or spear, and for each seine more than twelve (12) feet long and four (4) feet wide, dip net, gil lnet, set net, trammel net, pond net, cast net or other kind of net, trap, the officers so seizing and destroying the same shall be paid out of the county treasury of the county, where the same is seized and destroyed the sum of five dollars ($5), and upon each spear or gig so seized and destroyed such officer shall in like manner be paid the sum of one dollar ($1): *Provided,* That no such sums shall be paid to such officer unless the owner or the person in whose possession such article or articles are found shall have been convicted and fined for using or having such article or articles in possession. [2533.]

350. **Fish trap prohibited:** Any person who shall construct any fish trap or other device for catching fish, or shall shoot, spear, gig, or in any manner take or kill any fish within one thousand feet of any fish ladder constructed on any dam in the state of Indiana, save and except by hook and line, shall, on conviction, be fined not less than twenty-five dollars nor more than seventy-five dollars, and the township trustee shall, or any other person may, destroy any fish trap or other device for catching fish found within one thousand feet of any such fish ladder. [2534.]

351. **Sale of fish caught in state:** Whoever shall sell or offer for sale any pike, pickerel, wall-eyed pike, perch, bluegills, black bass, green bass, rock bass, or other species of bass caught in any of the waters of this state, at any time, shall, on conviction, be fined five dollars ($5) for each fish caught, sold or offered for sale, and proof that any of the varieties of fish mentioned in this section were sold or offered for sale shall be considered *prima facie* evidence that said fish were caught in the waters of this state. [2535.]

352. **Fishing when ice on streams; catching fish; number in one day limited:** Whoever shall take, catch or kill or attempt to take, catch or kill any fish in any of the waters of this state by any means or with any device whatever, except with not to exceed two fish hooks at any one time, at any time when such waters are covered in whole or in part with ice; or whoever shall catch, kill or have in his possession more than fifty bluegills, sun-fish or crappies in any one day, or whoever takes or attempts to take any fish by any means, or with any device, from any of the waters of this state, at any time when the same are covered in whole or in part with ice, from, or in any movable fish house, fish shanty, or other movable enclosure shall be deemed guilty of a misdemeanor, and on conviction shall be fined five dollars ($5) for each fish caught or possessed in violation of this section, and not less than ten dollars ($10) nor more than twenty-five dollars ($25) for each attempt to catch fish in violation of this section. It shall be unlawful for any railroad company, express company, or other common carrier to transport, take or carry, or receive for the purpose of transporting, taking or carrying beyond the limits of this state any pike, pickerel, wall-eyed pike, perch, bluegill, black bass, green bass, rock bass or other species of bass, and it shall be unlawful for any person or persons to deliver or offer to deliver to any railroad company, express company, or other common carrier, any of said species of fish for the purpose of transporting, taking or carrying the same beyond the limits of this state: *Provided*, That none of the provisions of this section shall prevent the owner of private ponds from taking fish from said private ponds in any manner, or said owner from possessing or selling any such fish, or any common carrier from transporting any such fish which have been taken from private ponds, or to prevent any person, other than a common carrier, from personally taking a total of not to exceed twenty-four (24) of the said species of fish

caught by himself beyond the limits of this said state, which said fish shall be carried by such person openly for inspection by any officer of the Indiana fish and game commission: *Provided,* That before any common carrier shall transport any fish from private ponds, the owner of said ponds shall present an affidavit stating that said fish were taken from said private ponds, the word "private pond," as used herein shall be construed to mean and include any body of water of not greater than twenty acres in area lying wholly within or upon the land of any landowner. Whoever shall violate any of the provisions of this section shall, upon conviction thereof, be fined ten dollars ($10) for each fish transported, taken or carried, or received for the purpose of transporting, taking or carrying or delivered, or offer of delivery for the purpose of transporting, taking or carrying beyond the limits of this state. [2536.]

353. **Ice on lakes, catching fish:** SEC. 1. That it shall be unlawful to take, catch, kill, or attempt to take, catch or kill, any fish in the waters of any fresh water lakes in the state of Indiana having a water area of not more than two and one-half square miles, and not less than two square miles, as shown by the twenty-fifth annual report of the department of geology and natural resources of the state of Indiana, for the year of 1900, when the waters of such lakes are covered in whole or in part with ice.

354. **Penalty:** SEC. 2. Whoever shall violate any of the provisions of this act shall be fined in any sum not exceeding five dollars for each and every attempt so to take, catch or kill any fish, and not less than five dollars nor more than twenty-five dollars for each fish so taken, caught or killed from the waters of such lakes.

355. **Shooting fish:** Whoever at any time shoots or shoots at any fish of any kind in any of the waters of this state, shall, on conviction, be fined not less than five dollars nor more than fifty dollars for each offense, to which may be added imprisonment in the county jail not exceeding thirty days. [2539]

356. **Trot line:** Whoever fishes in any of the waters of this state with more than one trot line, having not to exceed one hundred hooks, at any one time, shall, on conviction, be fined not less than five dollars nor more than fifty dollars for each offense: *Provided,* That the provisions of this section shall not apply to the Ohio river, Lake Michigan, and the Wabash river so far as it is the boundary line between the states of Indiana and Illinois. [2540]

357. **Catching of fish regulated:** Whoever shall take, catch or kill, or attempt to take, catch or kill in any of the waters of this state by means of any gig, spear, seine, net, or trap of any kind, except as otherwise provided in this section; or whoever shall kill or destroy, or attempt to kill or destroy any fish by the use of Indian cockle, fish berries or other substances which have a tendency to stupefy or poison fish, shall, on conviction, be fined not less than ten

dollars nor more than twenty dollars, to which may be added imprisonment in the county jail for any period not to exceed thirty days, and for a second or subsequent offense he shall be fined not less than fifty dollars nor more than two hundred dollars, to which may be added imprisonment in the county jail for any period not to exceed sixty days: *Provided,* That the provisions of this section as to the use of a gig, spear, seine, net, or trap of any kind shall not apply to the waters of Lake Michigan, private ponds, the Ohio river, or the Wabash river so far as it is the boundary lines between the states of Indiana and Illinois; but, in such case, it shall, nevertheless, be unlawful to use any net, seine, or trap in the Ohio river, or Wabash river so far as the same is the boundary line between the states of Indiana and Illinois, within one hundred yards of the mouth of any stream emptying into said rivers from the Indiana side. Nor to persons catching minnows for bait with a minnow trap or minnow seine, which seine shall not be more than twelve feet long, four feet deep, and the meshes of which shall not be larger than one-fourth of an inch. [2541]

358. **Size of fish caught:** No pickerel or pike perch, commonly called wall-eyed pike, less than twelve inches in length, or rock bass, or crappie, less than six inches in length, or black bass less than ten inches in length, shall be intentionally taken from waters of this state, or possessed, and in case any such fish is taken the person taking it shall immediately return it to the waters from which it was taken without unnecessary injury. Any person violating the provisions of this section shall, on conviction, be fined not exceeding ten dollars. [2270]

359. **Number of fish caught:** No person shall take, catch, kill or possess more than twenty bass in any one day. Where two or more persons are fishing or angling from the same boat, the aggregate number of bass taken, caught, killed or possessed by the occupants of said boat shall not exceed thirty-six. Whoever shall violate any of the provisions of this section shall, on conviction, be fined not less than five dollars nor more than twenty-five dollars for each fish so taken or possessed in excess of the number as limited in this section. [2543]

360. **Obstruction of streams:** Whoever stretches or places any obstruction other than a dam across any of the streams of the state which prevents the fish from ascending or descending any such stream shall be fined not less than ten dollars nor more than one hundred dollars. [2544]

361. **Stretching net near Ohio river:** Whoever stretches or places any net or other obstruction across any creek emptying into the Ohio river in this state, and within one mile of the mouth of such creek, in order to prevent the ingress of fish into such creek from such river, above such obstruction, or their egress from such creek into such river, shall for every day such obstruction is continued be fined not more than twenty dollars nor less than five dollars. [2545]

362. **Pollution of streams:** It shall be unlawful for any person, firm or corporation, to cause, suffer, or pemit any dye-stuff, acid, coal-tar, oil, log-wood, sulphur water or other refuse matte or substance to be thrown, run or drained into any of the waters of this state in quantities sufficient to injure or destroy the lives of fish which may inhabit the same at or below the point where any such substance is discharged or permitted to flow into such waters. Whoever shall violate any of the provisions of this section shall, on conviction, be fined not less than twenty-five dollars nor more than one hundred dollars for each offense: *Provided*, That the provisions of this section shall not abridge the rights of owners of gas or oil wells to drain the waters from such wells into the waters of the state, as now permitted by law. [2645]

363. **Poisoning fish:** Whoever throws or places in any stream, lake or pond any lime or other deleterious substance with the intent to injure fish; or any drug, medicated bait, *coculus indicus* or fish berries, with intent thereby to poison or catch fish, shall be fined not more than fifty dollars nor less than ten dollars. [2547]

364. **Explosives prohibited:** Whoever uses dynamite or other explosive in any of the waters of this state, except for mining or mechanical purposes, by special permission of the commissioner of fisheries and game, or his chief deputy, shall, on conviction, be fined not less than two hundred and fifty dollars nor more than one thousand dollars, to which may be added imprisonment in the county jail not less than thirty days nor more than one year; and for a second or subsequent offense he shall be fined five hundred dollars and imprisoned in the state prison not less than one year nor more than three years. [2548]

365. **Private fish ponds:** SEC. 1. That it shall be unlawful for any person other than the owner or persons authorized by him to take, catch or attempt to take, catch or make away with any fish, eels or other property in or about a private fish pond, and any person found guilty of any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined in any sum of not less than five dollars nor more than one hundred dollars, to which may be added imprisonment in the county jail not less than ten days, nor more than one hundred days.

366. **Killing fish in private ponds:** SEC. 2. Any person other than the owner or persons authorized by him who shall kill, or destroy, or atempt to kill or destroy any fish, eels, or other property in or about any private fish pond by means of dynamite, or other explosive compounds or substance or by the use of Indian cockle, fish berries, or any other poisonous substance shall be deemed guilty of a felony and upon conviction thereof, shall be imprisoned in the state prison for a period of one year.

367. **Trespassing on land:** No person shall enter upon any enclosed land for the purpose of setting a trot line, nor shall any person

fish in any private pond, without first obtaining the consent of the owner, lessee or tenant of such premises. Whoever shall violate or attempt to violate the provisions of this section shall, on conviction, be fined not less than five nor more than twenty-five dollars. [2551]

368. **Commissioners of fisheries; fee in prosecutions:** In all cases of conviction or on pleas of guilty of violating any of the provisions of this act in relation to fish or game, there shall be taxed against each defendant so convicted, in favor of the commissioner of fisheries and game, a fee of twenty dollars as a part of the costs. Said fees shall be paid by the officer collecting the same to the auditor of state every sixty days, on the first day of alternate months, in the manner in which license fees referred to in section 611 of this act are paid; and such fees shall be paid to the treasurer of state by the auditor of state as a part of the fish and game protective fund to be expended by the commissioner of fisheries and game in paying rewards and other expenses for the detection and conviction of persons who violate provisions of this act, and the fish and game laws of this state.

369. **Powers of commissioners of fisheries not abridged:** Nothing contained in this act shall in any way abridge or repeal the powers conferred on the commissioner of fisheries and game by the act creating his office, but all the powers and privileges conferred on him by said act are hereby re-affirmed. [2553]

IV. Fish Ladders.

[In force since March 5, 1885.]

370. When any dam four feet or over in height shall be erected across any stream, fish ladders sufficient to allow the fish below such dam to pass over to the waters above must be erected and maintained by the owner of such dam. Heavy penalties are inflicted for shooting, trapping of catching (except with hook and line) fish on or near any fish ladder.

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The following firms and business men have advertised in this valuable book and joined **The Huntington Trust Co.** in placing the same in the hands of the farmers of Huntington county:

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Ewing, Tom, Huntington — Roofing, Spouting, Galvanized Iron.

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Guethler, George, Huntington — Candies, Ice Cream.

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Kenower, John & Sons, Huntington — Lumber, Sash, Doors, Glass.

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This is the modern method of construction. Years of life are added through the elimination of serious fence defects.

A wrap holds moisture, cracks the galvanizing and allows the water to attack the bare wire. A small amount of displaced galvanizing on "PITTSBURGH PERFECT" **reinforces the protection against rust at the electrically welded joint;** examine the joint.

Stays cannot slip. They are always just where they were put. Stay and strand wires become one piece when the union is made. The fence is like a solid sheet of perforated steel.

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Don't allow your prejudice in favor of the rapidly-declining and now antiquated methods you have heretofore known, to warp your good judgment.

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Could you ask any more definite protection? Your complete satisfaction is absolutely assured.

"Pittsburgh Perfect" Fences

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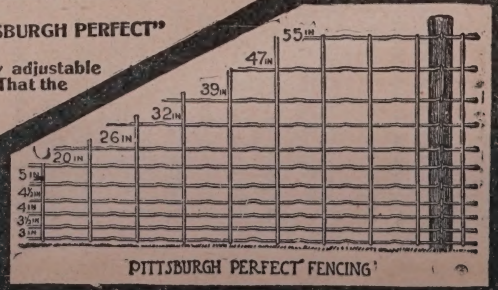

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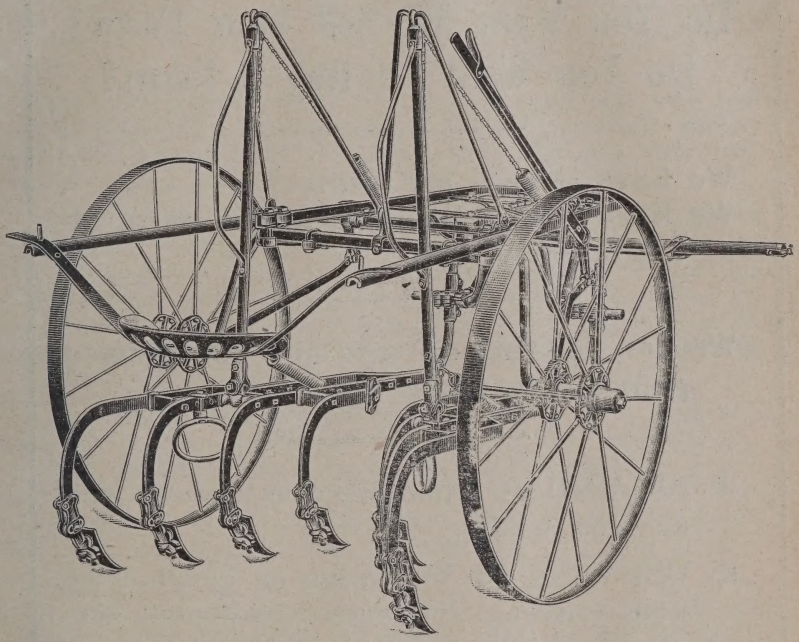

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American Farm Exchange

COLUMBUS, OHIO

CHAPTER 13.

Grist Mills.

[In force since May 6, 1853.]

371. Rate of toll: SEC. 1. At all water grist mills there shall not be charged for toll a higher rate than one-eighth part for grinding and bolting wheat and rye, and grinding Indian corn, oats and barley, and for grinding malt and chopping rye.

372. Liability of miller for loss, etc.: SEC. 2. Every bag or cask deposited at any grist mill shall have marked on it, in distinct and durable characters, the initial letters of his [the grist owner's] christian and the whole of his surname; and when so marked (and in that case only) the owner of such bag or cask, if the same be lost or destroyed, except by unavoidable accident, shall recover the value of the grain, bag or cask so lost or destroyed.

373. Failure to grind in turn; penalty: SEC. 3. Every miller who shall fail to grind grain brought to his mill, in turn (except for purposes of distillation), or to receive and carry into and out of such mill, load and unload, such grain, when demanded by the owner thereof, shall be liable to such owner for damages in a sum not exceeding twenty dollars nor less than two dollars.

374. Penalty for not posting toll rates: SEC. 4. If any miller shall fail to keep posted up, in a conspicuous place in his mill, the rates of toll he shall charge for grinding grain; or shall demand or receive a greater rate than is so posted up, he shall forfeit, to any person who may sue for the same, the sum of one dollar for every day he shall fail to keep such rates so posted up, or in every case in which he shall demand or receive such greater rate.

CHAPTER 14.

Highways.

I. Width of highways.
II. Establishment and repair of highways on county and township lines.
III. Law governing the use of bridges.
IV. Work on highways by citizens.
V. Miscellaneous provisions.
VI. Cutting weeds and thistles on highways.
VII. Motor vehicles; law governing use of on highways.
VIII. Camping on highways by gypsies and wanderers.

The statutory provisions in Indiana regulating the petitioning for, laying out and building of highways, are entirely too voluminous to be be set out in full in so small a volume as this one. Those laws with proper comments thereon, would, alone, fill a fair sized volume. Besides, it was not intended that road building should be discussed or treated in this book. Full information upon that subject may be obtained through the township and county officers and competent legal counsel. Our principal object here is to state briefly those provisions of the law governing the repair, and defining the respective rights and duties of citizens in the care and use of the public highways.

I. Width of Highways.

375. **Width of Highways:** No county road shall be less than thirty feet, and no township road shall be less than twenty-five feet wide; and the order for laying out any highway shall specify the width thereof. [7794]

II. Establishment and Repair of Highways on County and Township Lines.

376. **Establishment and repair of highways on county and township lines:** Public highways established on a county or township line shall be opened and repaired by the township superintendents of the proper road district on each side thereof, and by the joint labor of the hands in each of such in each county or township. [7795]

III. Law Governing the Use of Bridges.

377. **Repair of bridges; riding or driving, notice:** SEC. 43. The board of commissioners of every county shall cause all bridges therein to be kept in repair, and shall cause the supervisor of the proper road

district to keep in a conspicuous place at each end of any bridge in his district, whose chord is not less than twenty-five feet, the following notice, in large letters: "One dollar fine for riding or driving on this bridge faster than a walk." And if any person shall ride or drive over any such bridge faster than a walk, or if he shall in any manner willfully injure such bridge, he shall, for every such offense, forfeit and pay any such sum not less than one dollar nor more than treble the damages legally ascertained, to be recovered by the proper supervisor before any justice of the peace of the proper county, which sum so recovered shall be applied to the repairs of such bridges.

VI. Work on Highways by Citizens.

378. Who required to work on public highways; time: SEC. 95. Such supervisor shall call out all able-bodied male persons, except insane, idiotic, deaf and dumb, and blind persons, who are residents of such district and are over the age of twenty-one years, and under fifty years of age, and not exempt from such labor, during not less than two nor more than four days of each year, between the first day of May and the first day of December of each year. The supervisor shall require such persons to work on the highways of such district eight hours each day, and to furnish in such labor any tool that the supervisor may direct, if the demand therefor be a reasonable one. Any person able to perform an ordinary day's labor shall be deemed able-bodied, within the meaning of this act, although the person may be in some respects disabled: *Provided*, That no person who served in the army or navy of the United States during the war for the Union or the war with Spain or in the Philippine Islands, and who was honorably discharged therefrom, shall be required to labor on the public highways.

379. Teams; credits, etc.: SEC. 96. Such supervisor may require any person liable to work on such highways who is the owner of an ox, mule or horse team, road scraper, road scoop, cart or wagon to furnish the same, and a driver, in such labor on such highways, and such person shall receive credit for two days' labor for each day's service by such driver and team, and shall be given a receipt by such supervisor accordingly.

380. False credits; penalty for giving: SEC. 97. Any road supervisor who shall issue and deliver to any person his receipt, giving credit for work done on highways in his district, when such person to whom, or for whom such receipt is issued, has not actually worked or caused work to be done for the full time that such receipts gives credit for at the rate of eight hours for one day's work or has not paid the commutation money as provided by law, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than ten dollars nor more than fifty dollars for every such receipt so issued.

381. **Notice to work highways:** SEC. 98. Such supervisor shall notify each person in his road district liable to work on the highways thereof of the time and place of working on such highways, at least three days prior to the time designated for such work. Such notice may be verbal or written, and if written shall be left at the residence of the person so notified.

382. **Who exempt from labor on highway:** SEC. 99. On application to the township trustee any person liable to work on the highways may be exempt therefrom if it be shown that he is unable from bodily infirmities to work thereon and that he is too poor to pay the commutation therefor; also any person who is a *bona fide* member of a legally organized fire company, located in any city or town in this state. And in such cases the township trustee shall execute to such person a certificate, which shall, on being presented to the supervisor, entitle him to such exemption.

383. **Commutation money may be paid instead of working:** SEC. 100. Any person liable to work on the highways may be exempt therefrom by paying to the supervisor of his road district one dollar and fifty cents for each day he is liable to work thereon, and in that case he shall receive a receipt therefor from the supervisor. Such supervisor shall be authorized to employ some person or persons to work out such money, at the rate of one dollar and fifty cents per day, on the roads of his district; or, failing so to do, he shall pay over all such money into the township treasury, for the benefit of the road district.

384. **Failure to work; penalty:** SEC. 101. Every supervisor, within ten days after warning out the hands liable to work in his district, shall notify the trustee, who shall bring suit before any justice of the peace of the township in which such district is situated, and in the name of such township, against such persons as fail to work or pay over the commutation money therefor; and in such suit it shall be necessary to file only an account stating the number of days which each of such persons so failed to work or pay for, and charging one dollar and fifty cents per day each therefor; and in case of recovery against any such defendant, the judgment shall be rendered for one dollar and fifty cents for every day the defendant so failed, and costs of suit, and no stay of execution or benefit of exemption, valuation or appraisement laws shall be allowed on such judgment. In case any such trustee shall fail to bring suit, after having been so notified by such supervisor, he shall forfeit and pay the sum of ten dollars, to be recovered in an action brought by the prosecuting attorney, before any justice of the peace of the township, in the name thereof; and all moneys so recovered under the provisions of this section shall be received and expended under the direction of the township trustee by the proper supervisor in the improvement of the highways of his district: ***Provided,***

That any such trustee shall not be required to bring suit against any person from whom there is no probability of collecting, or who, at the time of working, shall be sick or otherwise unable to labor. If such person so temporarily sick or disabled be liable to pay commutation, he shall so pay, or the trustee shall sue therefor within sixty days. No person able to pay commutation shall be exempt on account of bodily disability.

385. Substitutes may work: SEC. 102. Any person liable to perform labor on the public highways, when notified for such purpose, may appear in person or by an able-bodied substitute, and the person or substitute so appearing shall actually work eight hours each day, under penalties of twenty-five cents for every hour such person or substitute shall be in default, to be deducted by the supervisors from the price of the day's labor.

386. Idling; penalty: SEC. 103. If any such person or his substitute, after appearing, shall remain idle or not work faithfully, or shall hinder others from working, such offender shall, for every such offense, forfeit the sum of one dollar and fifty cents, to be collected from such person as other fines and forfeitures herein specified, and such person or his substitute shall be discharged by the supervisor without credit for any part of the work he may have done.

387. Repairs; how made: SEC. 104. Such supervisor, within ten days after the receipt of any money which he is not required to pay over to the township trustee, shall proceed to employ laborers to repair the highways in his district, but shall not pay more to such laborers than is customary in his district for similar services, and such supervisor shall superintend such repairs; but in no case shall such supervisor neglect to repair such highways, and if such labor shall be insufficient therefor, he shall call out the hands in his district to complete such repairing. If any person so called out shall refuse to work, he shall be liable to pay the commutation money therefor, and it shall be the duty of the trustee to bring suit for the same as provided in section one hundred and one of this act.

388. Credit for extra labor: SEC. 105. When such extra labor provided for in the next preceding section shall not require all the hands in the district, or an equal amount of labor from each, the supervisor may assess the same upon such hands as he may deem sufficient, and for the excess of work performed by any one over the average amount performed by all he shall give to each person performing such excess a certificate of the amount thereof, which shall be credited to the holder on account of any subsequent labor to be done by him on the highways in his district.

VII. Miscellaneous provisions.

389. **Obstruction of highway; removal:** SEC. 107. When a public highway, running through or bordering upon a tract of real estate, shall become obstructed, the owner or occupant of such land shall remove such obstruction as soon as the same shall come to his knowledge, for which the proper supervisor shall allow him a reasonable credit on his liability to work on the highways, unless the obstruction be caused by the act of such owner or occupant, in which case he will be required to remove the same without any credit.

390. **Trees on highway belong to land-owner:** SEC. 108. All trees standing or lying on the land over which any highway shall be laid out, which it shall be necessary to remove in the opening of such highway, shall belong to the owner of such land, if he shall remove the same before the supervisor is required to open such highway; but all such trees and down timber, or other material found on such premises, may be taken and used by the proper supervisor for the construction or repair of the highway or of any bridge thereon.

391. **Repair of bridge or culvert:** SEC. 109. If the township trustee of the township where any proposed bridge or culvert is to be located or repaired shall notify the board of commissioners of his county of the necessity of such location or repair, and if in the opinion of the commissioners the public convenience shall require the building or repairing thereof, they shall cause surveys and estimates to be made and provide for the erection of the same: *Provided*, That if the board of commissioners shall not deem such bridge or culvert of sufficient importance to justify an appropriation from the county treasury for the building or repair thereof, the trustee of the township in which is located such bridge or culvert may appropriate any part of the road fund in the township treasury for that purpose, if he shall deem it right and expedient to do so.

392. **Injuring or obstructing highway; penalty:** SEC. 113. Any person who shall injure any dam, drain, embankment, ditch or other construction made for the protection of any highway or bridge, or who shall wilfully destroy any guide-post, or deface any inscription or device thereon, or who shall unnecessarily, and to the hindrance of passengers, obstruct any highway or bridge, and who shall, when driving any vehicle, fail to pass to the right when meeting another vehicle, so as to allow it to pass without injury, for every such offense, shall forfeit the sum of five dollars, to be recovered by the trustee in the name of the township before a justice of the peace of the county; and for every day such obstruction is continued the same sum shall be recovered. In all cases such trustee, within three days after receiving information of any such offense, shall commence such suit, and the sum recovered thereon shall be used for the benefit of the highways of

such township. In case of a recovery in any such action the justice of the peace shall tax, as costs, the sum of five dollars as attorney's fees for plaintiff's attorney.

393. **Removing and resetting monuments and corner-stones:** SEC. 1. That whenever, in any road district in this state, any stone or other monument has been placed in any public highway for the purpose of marking any section, line, corner or division of land, so that the said stone or other landmark projects above the surface of the ground in such manner as to be an obstruction to the travel of such public highway, it shall be the duty of the supervisor of such road district to appoint a day and time and notify the adjacent land-owners, or occupants of lands adjacent to such obstruction, to be present on such day and time; and at such time such supervisor shall remove such obstruction by then and there sinking the same vertically in the ground so that it will not project above the surface of the ground; and if the said owners or occupants of said lands fail to be and appear at such time and place, then such supervisor shall call upon the township trustee to be present at such time as the supervisor may direct, and said supervisor and trustee shall proceed to remove said obstruction in the manner herein provided.

[In force since May 6, 1853.]

394. **Hedges along highway; regulation:** SEC. 48. The trustee of any township, on petition of an individual desiring to plant a hedge on his land adjoining a public highway, may grant such individual the privilege of placing his fence seven feet on such highway, provided said fence will not be an obstruction to the highway.

VIII. Cutting Weeds and Thistles on Highway.

[In force since April 14, 1897.]

395. **Cutting weeds along highways; duty to landowners to cut:** SEC. 1. That all land-owners through or along whose lands public highways are laid out and extended, shall, between the first day of July and twentieth day of August in each year, cause all briers, thistles, burrs, docks and other noxious weeds growing along said highway and contiguous to their lands, to be cut down and destroyed for the length and distance the said highway shall extend along or through their lands.

396. **Credit on road tax:** SEC. 2. Any land-owner through or along whose lands public highways are laid out and extended, who shall in complaince with section 1, of this act, cut down and destroy for the length and distance the said highway shall extend along or through his lands, all briars, thistles, burrs, docks and other noxious weeds growing along said highway, or contiguous thereto, shall be allowed for such work or service the sum of one dollar and twenty-five cents per day, eight hours to constitute a day, and proportionate thereto; the work to be done under the direction of the supervisor in charge of said road district, and to be credited upon his road taxes as other work is credited.

397. **Neglect of land-owner, duty of supervisor:** SEC. 3. That any such land-owner who neglects, or refuses, after the said twentieth day of August in each year, to comply with the requirements specified in first section of this act, the supervisor in charge of said road district shall hereby be empowered to secure the services of any resident property-owner of said road district to cut down and destroy such briars, thistles, burrs and docks and other noxious weeds, said resident property owner to be allowed for such work or service the sum of one dollar and twenty-five cents per day, eight hours to constitute a day, and proportionate thereto, and to be credited upon his road taxes as other work is credited.

[In force since April 10, 1907.]

398. **Canada thistles; duty of land-owner or tenant; supervisor; duties:** SEC. 1. That it shall be the duty of road supervisors in this state, in addition to their other duties, when any person has made complaint of them, that there is growing on the premises of any land owner or resident tenant within their districts, Canada thistles to the length of six inches, measuring from the surface of the soil to the end on [or] tip of the stem above the surface of the ground, to enter upon any such premises without anywise being a trespasser, and if they ascertain such report to be true, they shall notify the owner, occupant, tenant or agent of said land to within five days cut the said Canada thistles off below the surface of the ground, and if said owner, occupant, tenant or agent can not be found, then by posting a notice reciting that such Canada thistles are growing in such manner on such premises, describing the same, and demanding that they be cut in such manner as herein provided, in the township where such land or premises are located, and in a public place therein, for five days, and at the expiration of such time if said Canada thistles have not been removed as provided, then in that event, such road supervisors or supervisor shall report the matter to the trustees of the township wherein such land or premises are located, and make a certified statement in writing of any and all action taken, and that said Canada thistles have not been cut off as demanded in the said notification or notice.

399. **Township trustees; duties; when owner or tenant refuses to cut, etc.:** SEC. 2. It is hereby made the duty of the township trustees of this state, immediately upon receiving the road supervisor's report and statement as mentioned in the preceding section, to cause such Canada thistles to be cut off as herein and heretofore provided in this act, and existing laws on the subject. Such trustee or trustees shall assign the work of cutting and removal of such thistles to the road supervisor making report, and if he decline then by employing one resident of the township to do such work, and the trustee, supervisor or person employed for the purpose, may enter upon the lands, premises and property of another to perform such work and labor, and in the discharge of said duty shall in nowise be deemed or held as a trespasser.

400. Compensation; cost of cutting to be lien on land: SEC. 3. Township trustees, with the advice of the advisory board, and under such rules as they may prescribe, are hereby authorized to pay for such work and labor performed in the cutting of thistles under the provisions of this act, the sum of twenty cents an hour, for the time actually employed in the said work. When said work has been performed, the person doing the same shall file his itemized bill for such work in the office of the trustee of the proper township, and when the same has been approved or allowed, the trustee of the township shall certify such cost or expense of such work with a description of the farm or premises on which said labor was performed to the auditor of the county in which said lands, property or premises are situated, and upon the filing of such trustee's certificate in the office of the auditor, such sums or sum for labor performed, shall be a lien against the lands, property or premises named or described in such certificates, as the lands on which such Canada thistles are cut.

401. Cost of cutting to be collected as other taxes: SEC. 4. That county auditors, upon receiving and filing such trustees' certificates as named in this act, shall immediately place said amounts on the tax duplicate of the county as a special tax against such lands, property or premises, and such special tax shall be due at the next taxpaying time, and shall be collected for the proper township or townships, the same as other state, county or township taxes are collected, including penalties, forfeitures, and sales.

402. This law also applies to towns: SEC. 5. This act shall also apply to towns in this state, and the duties required to be performed by road supervisors, shall be performed by the marshal or street commissioner in said towns, and the duties required to be performed by township trustees shall be performed by the board of trustees of said town.

IX. Motor Vehicles; Law Governing Use of Highway.

[Act of 1905 with amendments passed in 1907 and 1909.]

403. Motor vehicles defined: SEC. 1. That the words and phrases used in this act shall for the purpose of this act only be construed as follows: 1. "Motor vehicles" shall include all vehicles propelled by any power other than muscular power, excepting traction engines, road rollers and such motor vehicles as run only upon rails or track.

404. Speed regulations; lights: SEC. 2. That any person or persons operating a motor vehicle on any public highway or in any public place shall not operate the same at any rate of speed greater than is reasonable and proper, having regard to the use in common and of such highway or place, or so as to endanger the life or limb of any person, and in no event shall such motor vehicle be operated at a greater rate of speed than eight (8) miles an hour in the business and closely built up

portions of any municipality of this state, nor more than fifteen (15) miles an hour in any other portions of such municipalities, nor more than twenty (20) miles an hour outside such municipalities. Upon approaching a bridge, dam, sharp curve, or steep descent and also in traversing such bridge, dam, curve, or descent, and upon approaching a crossing of intersecting highways, a person operating a motor vehicle shall have it under control and operate it at a speed not greater than is reasonable and proper, having regard to the safety of traffic then on such highway and of the public: *Provided, further,* That after dark all automobiles shall carry lighted lamps.

405. **Ordinances as to speed:** SEC. 3. That any rate of speed provided in section two (2) of this act shall not be diminished nor prohibited by any ordinance, rule or regulation of any municipality, board or other public authorities.

406. **Motor equipment; signals:** SEC. 4. Any person or persons operating a motor vehicle shall at all times provide the same with a good and efficient brake and a suitable bell, horn or other signal, and shall upon approaching any person or persons riding, leading or driving a horse, horses, draft animals or other farm animals upon any public highway or in any public place, signal such person or persons with said bell or horn either upon overtaking or meeting any such person or persons, giving such person or persons a reasonable time to prepare for the passing of said motor vehicle.

407. **Stop on signal; highway rules:** SEC. 5. That any person or persons operating a motor vehicle shall upon meeting any person or persons riding, leading or driving a horse, horses or other draft animals or other farm animals on any public highway, proceed at a speed not to exceed six miles per hour until past such horse, horses or other draft animals or other farm animals, and upon request or signal by putting up the hand from any such person or persons so riding, leading or driving any horse, horses or other draft animals or other farm animals (if in sufficient light for such signal to be perceptible), immediately bring his motor vehicle to a stop and remain stationary so long as may be reasonable to allow such horse, horses or other draft animals or other farm animals to pass, and upon request shall furnish such aid as may be necessary to such person or persons; and upon overtaking on any public highway any person or persons riding, leading or driving a horse, horses or other draft animals or other farm animals the operator of any motor vehicle when signaled as above provided, shall reduce the speed of such motor vehicle and before passing shall allow reasonable time for such animal to be driven or conducted to the right side of the road: *Provided,* That the driver of any horse, horses or other draft animals or other farm animals shall, upon the approach of any motor vehicle, traveling in the opposite direction, drive to the right so as to give to said motor vehicle one-half of the traveled portion of the highway or street, and upon the approach

of any such motor vehicle traveling in the same direction, the said driver of any such animal or animals shall upon signal of bell or horn from any such motor vehicle drive to the right with reasonable promptitude so as to give to said motor vehicle one-half of the traveled portion of the said highway or street, and the operator of any motor vehicle upon the approach of any driver of horse, horses or other draft animals or other farm animals, moving in the opposite direction, shall drive his motor vehicle to the right so as to give one-half of the traveled portion of the highway or street to the driver of said horse, horses or other farm animals. It shall be a misdemeanor for any person to operate a motor vehicle of any kind upon any public highway or street while intoxicated, or under the influence of intoxicating liquor, and upon conviction he shall be subject to punishment by a fine not exceeding one hundred dollars, or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court. [*As amended March 6, 1909.*]

408. **Owner to register with secretary of state:** SEC. 6. That every owner of a motor vehicle shall, for every such motor vehicle owned by him, file in the office of the secretary of state a statement of his name and address, with a brief description of the vehicle to be registered on a blank, to be prepared and furnished by such secretary for that purpose. The filing fee shall be one dollar ($1); all of which fees to be paid into the general fund of the state treasury as other fees now collected by the secretary of state are required to be paid into the treasury.

NOTE: — By the provisions of an act approved March 6, 1909, any number of persons not less than three may form themselves into a corporation for the purpose of acquiring and maintaining parks and speedways for showing and testing motor cars, balloons, airships, etc.

409. **Assignment of number:** SEC. 7. The secretary of state shall thereupon file such statement in his office, register such motor vehicle in a book to be kept for that purpose and assign it a number in the order of filing. Such numbers shall be determined and arranged as follows: Numbers shall be in series of one hundred, of which the first shall consist of the numbers A1, A2, A3, and so on to A100 inclusive; the second series shall consist of the numbers B1, B2, B3 and so on to B100 inclusive; the following series shall be arranged in the same way, taking each letter in the alphabet in order until all such letters have been so used; the twenty-sixth will thus consist of the numbers from Z1 to Z100 inclusive: The twenty-seventh series shall then consist of the numbers A O-1, A O-2, A O-3 and so on to A O-100 inclusive, and the following series shall be arranged in the same way, using all the letters of the alphabet. If it shall be found necessary to use a third or further additional set of such series numbers, such third set shall consist of numbers beginning with A1-1, A1-2, and son to A1-100 inclusive and similar series shall be arranged for the

succeeding letters of the alphabet and if necessary, additional sets of such series numbers shall be formed in the same way. [As amended, Acts 1907, p. 558.]

410. **Acquiring motor; registering:** SEC. 8. Every person acquiring a motor vehicle shall file a like statement with the secretary of state, and such secretary of state shall in like manner file such vehicle and assign it a number. If the vehicle has previously been registered such fact and number assigned it shall be set forth in the statement, and the previous registration shall be cancelled, but the number of such previous registration may be assigned under the new registration.

411. **Metal seal; display on vehicle:** SEC. 9. The secretary of state shall forthwith on such registration and without other fee issue and deliver to the owner of such motor vehicle a seal of aluminum or other suitable metal, which shall be circular in form and two (2) inches in diameter, and have stamped therein the words, "Registered in the office of secretary of state of Indiana under the motor vehicle law, No. ——," with the registration number inserted therein, which seal shall thereafter at all times be conspicuously displayed on the motor vehicle to which such number has been assigned.

412. **Display of number; style and size:** SEC. 10. Every motor vehicle shall also at all times have the number asigned to it by the secretary of state displayed both on the front and on the back of such motor vehicle in such manner as to be plainly visible, the number to be Arabic numerals in white upon a black ground, each four (4) inches in height, and each stroke to be of a width one-half (½) inch, and also as a part of such number the first three (3) letters of the state name, all letters to be four (4) inches in height, and no other designating mark shall be required by any city, town or other municipality, nor shall any city, town or other municipality require the payment of any license upon any motor vehicle or by the owner thereof: *Provided*, That the requirements of this section, so far as the same relates to the display of a number upon the front end of such motor vehicle shall not apply to motor cycles.

413. **Penalties:** SEC. 13. If any person neglects or refuses to comply with any of the provisions of this act he shall on conviction thereof before any justice of the peace or other court having jurisdiction, be fined not more than fifty ($50) dollars for a first offense and shall be fined not more than one hundred ($$100) dollars for a second offense, and shall be fined not more than two hundred ($200] dollars for a third or subsequent offense.

X. Camping on Highways by Gypsies and Wanderers.

[Approved February 26, 1909.]

414. **Gypsies and wanterers not to camp on highways without consent, etc.:** SEC. 1. That it shall be unlawful for any band of

gypsies, wanderers, travelers or other person or persons, to camp in tent, wagon or otherwise, on any public highways in this state, or lands adjacent thereto, without consent of the owners of such adjacent land, or consent of the owner of the land abutting on the highway where such camping place is made.

415. **Penalty:** SEC. 2. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding twenty-five dollars ($25), or imprisoned in the county jail not exceeding thirty days, or both.

CHAPTER 15.

Interest.

416. **Legal rates:** SEC. 1. The interest on loans or forbearance of money, goods, or things in action, when the parties do not agree on the rate, shall be six dollars a year on one hundred dollars, and at that rate for a greater or less sum, or for a shorter or longer time; but it may be taken yearly, or for a shorter period, in advance. No agreement to pay a higher rate shall be valid, unless the same be in writing, signed by the party to be charged thereby; and, in such case, it shall not be lawful to contract for more than eight per centum per annum. [7950]

417. **Rate on judgments:** SEC. 2. Interest on judgments for money hereafter rendered, shall be from the date of the return of the verdict or finding of the court, until the same shall be satisfied, at the rate per cent. agreed upon by the parties in the original contract, not exceeding six per cent.; and if there be no contract by the parties, at the rate of six dollars a year on one hundred dollars. [7951]

418. **Rate on writings and accounts:** SEC. 3. On money due on any instrument in writing, on an account stated from the date of settlement, or an account closed upon the day an itemized bill shall have been rendered and payment demanded, or on money had and received for the use of another, and retained without his consent, interest shall be allowed at the rate of six dollars a year on one hundred dollars. [7752]

419. **Usury; recovery by debtor:** SEC. 4. When a greater rate of interest than is hereby allowed shall be contracted for, the contract shall be void as to the usurious interest contracted for; and in an action on such contract, if it appear that interest at a higher rate than eight per cent. has been directly or indirectly contracted for, the excess of interest over six per cent. shall be deemed usurious and illegal, and in an action on a contract affected by such usury, the excess over the legal interest may be recouped by the debtor, whenever it has been reserved or paid before the bringing of the suit. [7953]

420. **Costs:** SEC. 5. If an action be instituted on a contract in which illegal interest shall have been directly or indirectly contracted for, and the defendant shall have, before the commencement of the suit, tendered to the plaintiff his principal, with six per cent. interest, the defendant shall recover costs. [7954]

421. **When deemed by the year:** SEC. 6. When, in any law or contract, a rate of interest is specified, but no period of time is mentioned

for which such rate is to be calculated, it shall be deemed to be by the year. [7955]

422. **Contracts affected:** SEC. 7. The provisions of this act shall apply to all contracts made within this state, although they are to be performed without this state; and when a contract shall be made without the state, and a rate of interest greater than that herein allowed shall be directly or indirectly contracted for, and a mortgage shall be executed to secure the performance of the contract, on lands in this state, such lands shall not be liable for a higher rate of interest than is provided for in this act. [7956]

423. **Repeal; saving clauses:** SEC. 8. All acts on the subject of interest, including such as relate to interest on public funds, interest on purchase-money of canal, college, school or saline lands, are hereby repealed; and hereafter the interest on public funds, purchase-money of canal, college, school or saline lands, and upon the permanent school fund, shall be at the rate of eight dollars a year on one hundred dollars. But nothing herein contained shall be construed as affecting existing contracts, except after verdict, as herein provided, nor a right to defend in a suit upon such contracts for excessive interest as is now provided by law. [7951]

424. **Interest to be received by banks:** SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals loaning money. [208]

425. **Rate of interest to be recovered by surety:** In any case when a surety on any bill, note, bond, or other instrument in writing shall be compelled to pay the debt or obligation of the principal debtor, such surety shall recover such rate of interest on the amount so paid by him for his principal as was originally provided for in such bill, note, bond, or other instrument in writing, held against such principal debtor; and the judgment therein shall bear the same rate of interest, not exceeding ten per cent. per annum. [1276]

NOTE: — Public funds are deposited with banks at the rate of 2% per annum on daily balances, 2½% on semi-annual time deposits, and 3% per annum on annual time deposits.

CHAPTER 16.

Landlord and Tenant.

I. Tenancies and termination thereof.
II. Forcible entry and detention of property.

The relation of landlord and tenant is created by contract, either express or implied. One proof of the existence of the relation in the absence of any express contract, is the payment and acceptance of rent. A presumption of its existence is an agreement to pay rent. To create the relation there must be an actual occupancy by the tenant with the exclusive right of possession. The relation can not be implied where there is no tenancy contemplated by the parties.

I. Tenancies and Termination Thereof.

[In force since April 7, 1881.]

426. **Estate at will:** SEC. 1. Estates at will may be determined by one month's notice, in writing, delivered to the tenant.

427. **Tenancies at will, and from year to year:** SEC. 2. A tenancy at will can not arise or be created without an express contract, and all general tenancies, in which the premises are occupied by the consent, either express or constructive, of the landlord, shall be deemed tenancies from year to year.

428. **Notice to determine tenancies from year to year:** SEC. 3. All tenancies from year to year may be determined by at least three months' notice given to the tenant prior to the expiration of the year; and in all tenancies which, by agreement of the parties, express or implied, are, from one period to another, of less than three months' duration, a notice equal to the interval between such periods shall be sufficient.

429. **Form of notice:** SEC. 4. The following form of notice, or one substantially like it, may be used in the case of a tenancy from year to year (the date, names and description being changed to suit each particular case):

GEORGETOWN, FLOYD COUNTY, IND., NOV. 30, 1879.

To William Brown: You are hereby notified to deliver up to me, at the expiration of the current year the tenancy, the possession of the following described premises, viz: The southeast quarter of section six, in township two south, range five east, in the county of Floyd, and state of Indiana, now held of me, by you, as tenant.

ISAAC R. KELLER.

430. Non-payment of rent; notice: SEC. 5. If a tenant refuse or neglect to pay rent when due, ten days' notice to quit shall determine the lease, when not otherwise provided therein or agreed to by the parties, unless such rent be paid at the expiration of said ten days.

431. Form of notice for non-payment: SEC. 6. The following form of notice, or one substantially like it, may be used in the case of a failure or refusal to pay rent (the date, names and description being changed to suit each particular case):

NEW ALBANY, IND., November 30, 1879.

To Joseph Demorest: You are hereby notified to deliver up to me, at the expiration of ten days from the time of receiving this notice, the possession of the following premises, viz: The cottage house, with its appurtenances, situated on lot number ten, on Market street, in plat twenty, in the city of New Albany, county of Floyd, and state of Indiana, unless the rent due for said premises be paid within that time.

EZEKIEL R. DAY.

432. Notice, when unnecessary: SEC. 7. Where the landlord agrees with the tenant to rent the premises to him for a specified period of time; or where the time for the determination of the tenancy is specified in the contract; or where a tenant at will commits waste; or in the case of a tenant at sufferance; or where, by the express terms of the contract, the rent is to be paid in advance, and the tenant has entered, and refuses or neglects to pay the rent; and in any case where the relation of landlord and tenant does not exist—no notice to quit shall be necessary.

433. Notice, how served: SEC. 8. Notice, as required in any of the preceding sections, may be served on the tenant, or if he can not be found, by delivering the same to some person of proper age and discretion, residing on the premises, having first made known to such person the contents thereof; and if no such person can be found on the premises, then by affixing a copy of such notice to a conspicuous part of said premises.

434. Conveyance without attornment; payment of rent: SEC. 9. A conveyance of real estate, or any interest therein, by a landlord, shall be valid, without the attornment of the tenant. But the payment of rent by the tenant to the grantor, at any time before notice of sale given to said tenant, shall be good against the grantee.

435. Attornment to stranger: SEC. 10. The attornment of a tenant to a stranger shall be void, and shall not affect the possession of his landlord, unless it be made with the consent of the landlord, or pursuant to a judgment at law or the order or decree of a court.

436. Remedies of sub-lessees against landlord: SEC. 11. Sub-lessees shall have the same remedy upon the original covenant against the chief landlord as they might have had against their immediate lessor.

437. **Alienees' remedies:** SEC. 12. Alienees of lessors and lessees of land shall have the same legal remedies in relation to such lands as their principals.

438. **Rents upon life estates:** SEC. 13. Rents from lands granted for life or lives may be recovered as other rents.

439. **Termination of estate by death:** SEC. 14. A person entitled to rents dependent on the life of another may recover arrears unpaid at the death of such other person.

440. **Rights and liabilities of executors and administrators:** SEC. 15. Executors and administrators shall have the same remedies to recover rents, and be subject to the same liabilities to pay them, as their testators and intestates.

446. **Occupants liable for rent:** SEC. 16. The occupant, without special contract, of any lands shall be liable for the rent to any person entitled thereto.

447. **Rents on death of tenant for life:** SEC. 17. When a tenant for life who shall have demised any lands shall die on or after the day when any rent becomes due and payable, his executor or administrator may recover from the under-tenant the whole rent due; if he die before the day when any rent is to become due, they may recover the proportion of rent which accrued before his death, and the remainder-man shall recover the residue.

Landlord's Lien on crop: See Chapter on "Liens".

448. **Suit for possession, when tenant holds over:** Whenever, in pursuance of legal notice, or otherwise, any landlord or his legal representative shall be entitled to possession of lands, he may, by himself or his agent, have any tenant who shall unlawfully hold over removed from such lands, on complaint before a justice of the peace of the county in which such lands lie, specifying the matters relied on to justify such removal and the damages claimed for detention, describing the premises with reasonable certainty. [8071]

449. **Return of keys to landlord by tenant:** Whoever, being the occupant of any dwelling house, storeroom, hotel, flat, room, or suite of rooms, hall, or any other property, as a tenant, by virtue of a lease or otherwise, shall fail to return, or to offer to return, the key or keys of the premises to the landlord, or his lawful representatives, within twenty-four (24) hours after the vacation of the possession of the premises, and to obtain or demand from the landlord, or his lawful representative, a receipt for said key or keys, shall be guilty of a misdemeanor, and upon conviction thereof be fined in any sum not exceeding ten dollars: *Provided,* That the time of vacation of such premises shall be taken to mean the time at which such tenant left the premises for another permanent abode. [Approved Feb. 27, 1909.]

II. Forcible Entry and Detention of Property.

450. **Forcible entry and detainer:** SEC. 12. Any person who shall make unlawful or forcible entry into lands, and shall either peaceably or forcibly detain the same against any person having right to possession thereof; or any person having peaceably obtained the possesion of lands, who shall unlawfully and forcibly keep the same against any person having right to possession thereof, — may be ousted from such premises, and the possession thereof restored to the person entitled to the same, and damages for retention recovered on complaint by him made, in the same manner as provided in the case of tenants holding over.

NOTE: — See Chapter on "Business Terms" for general form of notice to quit premises.

451. **Forcible entry or detainer of lands:** Whoever violently takes or keeps possession of any lands, with menaces, force and arms, and without authority of law, is guilty of forcible entry, or forcible detainer, as the case may be, and, on conviction, shall be fined not exceeding one thousand dollars. [2323]

CHAPTER 17.

Liens.

I. Mechanics' liens.
II. Miscellaneous labor liens.
III. Lien on chattels for cost of repair.
IV. Lien of hotels and boarding houses, etc.
V. Lien of liverymen and others for care, and feeding stock.
VI. Landlord's lien on crop.
VII. Widows five hundred dollars, a lien.
VIII. Vendor's lien.
IX. Judgment liens.

I. Mechanic's Liens.

452. **Mechanic's liens:** SEC. 1. That contractors, sub-contractors, mechanics, journeymen, laborers and all persons performing labor or furnishing materials or machinery for the erection, altering, repairing or removing any house, mill, manufactory, or other building, bridge, reservoir, system of water works or other structure, or for constructing, altering or repairing or removing of any sidewalks, walk, stile, well, drain, sewer or cistern, may have a lien separately or jointly upon the house, mill, manufactory, or other building, bridge, reservoir system of water works or other structure, sidewalk, walk, stile, well, drain, sewer or cistern which they may have erected, altered, repaired or removed, or for which they may have furnished material or machinery of any description, and, on the interest of the owner of the lot or parcel of land on which it stands or with which it is connected to the extent of the value of any labor done, material furnished or either; and all claims for wages for mechanics and laborers employed in or about any shop, mill, wareroom, storeroom, manufactory, or structure, bridge, reservoir, system of water works or other structure, sidewalk, walk, stile, well drain, sewer or cistern, shall be a first lien upon all the machinery, tools, stock of material, work finished or unfinished located in or about such shop, mill, wareroom, storeroom, manufactory or other buildings; bridge, reservoir, system of water works or other structure, sidewalk, walk, stile, well, drain, sewer or cistern or used in the business thereof; and should the person, firm or corporation be in failing circumstances the above mentioned claim[s] shall be preferred debts, whether claim or notice of lien has been filed or not. [Approved March 6, 1909.]

453. **Extent of lien:** SEC. 2. The entire land upon which any such building, erection or other improvement is situated, including that

portion not covered therewith, shall be subject to lien to the extent of all the right, title and interest owned therein by the owner thereof, for whose immediate use or benefit such labor was done or material furnished and where the owner has only a leasehold interest, or the land is encumbered by mortgage, the lien, so far as concerns the buildings erected by said lien-holder, is not impaired by forfeiture of the lease for rent or foreclosure of mortgage; but the same may be sold to satisfy the lien and [be] removed within ninety [days] after the sale by the purchaser. [Approved March 6, 1909.]

454. **How obtained; notice:** SEC. 3. Any person wishing to acquire such lien upon any property, whether his claim be due or not, shall file in the recorder's office of the county, at any time within sixty days after performing such labor or furnishing such materials, or machinery, described in section 1, notice of his intention to hold a lien upon such property for the amount of his claim, specifically setting forth the amount claimed, and giving a substantial description of such lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of water works or other structure may stand or be connected with or to which it may be removed. Any description of the lot or land in a notice of a lien will be sufficient, if from such description or any reference therein, the lot or land can be identified. [Aproved March 6, 1909.[

II. Miscellaneous Labor Liens.

455. An employee of a person, firm or corporation which becomes insolvent, may have a preferred claim for labor, to the extent of $50.00. A lien against a corporation for labor is prior to any and all liens created after the date of such employment. Coal miners are given a lien on the mine, machinery, etc., for labor performed within two months and such lien shall be prior to all others except that of the state for taxes.

III. Lien on Chattel for Cost of Repairs.

456. **Lien of tradesmen, etc., when it exists and how enforced:** Whenever any person shall intrust to any mechanic or tradesman materials to construct, alter or repair any article of value, such mechanic or tradesman, if the same be completed and not taken away, and his fair and reasonable charges not paid, may, after six months from the time such charges became due, sell the same; or, if the same be susceptible of division without injury, he may sell so much thereof as is necessary to pay such charges, and such sale shall be at public auction, for cash or on reasonable credit, taking sufficient sureties in case of a sale on time. [8308]

457. **Notice of sale:** Before such sale, such mechanic or tradesman shall give public notice of the time and place thereof, by advertisements set up for ten days in three public places in the city or township where he resides, one of which shall be in some conspicuous part of his shop, or place of business; or, if the value of the article be ten dollars or more, by publishing the same three weeks successively in a newspaper in the county, if any. [8309]

IV. Lien of Hotels, Boarding Houses, Etc.

458. Hotels, boarding and lodging houses have a lien upon the baggage of guests until all bills for food, lodging, etc., are paid.

V. Lien of Liverymen and Others for Feeding Stock.

459. **For feeding stock:** The keepers of livery-stables and all others engaged in feeding horses, cattle, hogs and other livestock shall have a lien upon such property for the feed and care bestowed by them upon the same, and shall have the same rights and remedies as are provided for those persons heretofore having, by law, such lien in the act to which this is supplemental. [8294]

460. **Other bailees have lien:** SEC. 4. The provisions of this act (except those of the next section) shall apply to all cases of personal property on which the bailee or keeper has, by law, a lien for any feed or care by him bestowed on such property: *Provided,* That in cases where the person liable shall die before the expiration of six months from the time such charges had accrued, such sale shall not be made until the expiration of six months from the time of his decease.

461. **Sale of animals and perishable property:** SEC. 5. In cases embraced in the last preceding section, if the property bailed or kept be horses, cattle, hogs or other live stock, and in all cases embraced in this act where the property is of a perishable nature and will be greatly injured by delay, the person to whom such charges may be due, after the expiration of thirty days from the time when such charges shall have become due, proceed to dispose of so much of such property as may be necessary, as hereinbefore provided.

462. **Charges for keeping:** SEC. 6. Additional compensation for keeping and taking care of such property, necessarily incurred, may be taken from the proceeds of sale, as part of the charges.

463. **Preserving evidence:** SEC. 7. Attested copies of the notices required by this act and proof of the publication thereof, and an affidavit of the mechanic, tradesman, or bailee, or some competent witness on his behalf, setting forth his claims, shall be filed and kept in the clerk's office of the proper county, andth e same, or copies thereof, attested and sealed by such clerk, shall be received as testimony and shall be presumptive evidence of the matters therein contained.

VI. Landlord's Lien on Crop.

464. **Lien of landlord on crop:** In all cases where a tenant agrees to pay, as rent, a part of the crop raised on the leased premises, or rent in kind, or a cash rent, the landlord shall have a lien on the crop raised under such contract for the payment of such rent; which lien, if the tenant refuse or neglect to pay or deliver to the landlord such rent when due, may be enforced by sale of such crop, in the same manner as the lien of a chattel mortgage containing a power to sell: *Provided,* That nothing herein contained shall prohibit the tenant, after notice in writing to the landlord or his agent, from removing from such leased premises his own part of said growing crop, and no more than such part, and from also disposing of the same whenever the rent is to be paid in part of the crop raised; but in other cases, he may remove not more than one-half of the crop growing or matured. [8070]

VII. Widow's Five Hundred a Lien.

465. **Widow's five hundred dollars:** The widow of the decedent, whether he die testate or intestate, may, at any time before the sale, select and take articles therein named at the appraisement, not exceeding, in the aggregate, five hundred dollars. Each article taken by her shall be so noted on the inventory opposite the article taken, or a separate inventory may be made of the articles so taken, and returned with the general inventory. She shall execute a receipt therefor to the executor or administrator, which shall be returned and filed with the inventory. If the widow fail or refuse to select and take all or any part of the articles in this section provided, she shall be entitled to the amount of the deficiency, in cash, out of the first moneys received by the executor or administrator in excess of the amount necessary to pay the expenses of administration and of the last sickness and funeral of the deceased: *Provided,* That if the estate be clearly solvent, she shall be entitled to such payment out of the first moneys received by such executor or administrator. If the personal estate of the decedent be insufficient to pay the amount that may be due the widow, in cash, as aforesaid, the deficit shall constitute a lien upon the real estate of the decedent liable to sale for the payment of debts; which lien may be enforced, upon the petition of the executor or administrator, in like manner as lands of the decedent are sold for the payment of debts, and shall be superior to the lien of judgments upon said real estate rendered against the decedent. [2786]

VIII. Vendor's Lien.

[In force since March 9, 1889.]

466. **Satisfying lien of record:** SEC. 1. That every grantor in a deed of conveyance to real estate, which has been placed upon record, in which deed such grantor has retained a lien for purchase-money, or

other purpose, on the real estate so conveyed, shall, when full satisfaction of said lien shall have been received by the grantor, his assign or his lawful agent, and at the request of such grantee or other person authorized to make such request, enter saitsfaction of such lien on the margin of the record thereof, or in other proper place on such record, which shall operate as a complete release and discharge of such lien forever.

IX. Judgment Liens.

467. **Lien upon real estate; ten years:** All final judgments in the supreme and cirdcuit courts for the recovery of money or costs shall be a lien upon real estate and chattels real, liable to execution in the county where judgment is rendered, for the space of ten years after the rendition thereof, and no longer, exclusive of the time during which the party may be restrained from proceeding thereonby any oppeal or injunction, or by the death of the defendant, or by agreement of the parties entered of record. [635]

468. **Lien on bonds to state:** Judgments on bonds payable to the state of Indiana shall bind the real estate of the debtor from the commencement of the action. [636]

469. **Transcript to another county:** It shall be the duty of the clerk of any court of record of this state, rendering any judgment, to make out a certified copy thereof, under the seal of such court, at the request of any person interested; which copy may be filed in the office of the clerk of any circuit court of this state, and when so filed shall be recorded and entered in the judgment docket in the same manner as judgments rendered in any such court. [637]

470. **Lien of such judgments:** Such judgment, from the time of filing the copy aforesaid, shall be a lien upon all the real estate, including chattels real, of the judgment debtor, situated in the county where filed, as fully as if such judgment had been rendered thereon. [638]

[In force since February 18, 1893.]

471. **Transcripts from United States courts:** SEC. 1. That any person interested may file, or cause to be filed, in the office of the clerk of any circuit court of this state, a copy of any judgment rendered by the district or circuit courts of the United States, in and for the districts of Indiana, certified by the clerk of, and under the seal of such court of the United States, and when so filed the same shall be entered in the order-book and judgment docket in the same manner as judgments rendered in any such circuit court of the state of Indiana.

472. **Lien:** SEC. 2. Such judgment, from the time of filing the copy aforesaid, shall be a lien upon all the real estate, including chattels real, of the judgment debtor situated in the county where filed, as fully as if such judgment had been rendered therein.

473. **Transcript from justice:** It shall be the duty of every justice of the peace in this state, when requested by the plaintiff or his agent, to make out and certify a true and complete transcript of the proceedings and judgment in any cause upon any docket legally in his possession. The plaintiff may file such transcript in the office of the clerk of any court in this state. [613]

474. **Recording; docketing; lien:** It shall be the duty of the clerk, forthwith, to record the transcript in the order-book, and docket the judgment in the judgment docket. The judgment set forth in the transcript shall be a lien upon the real property of the defendant within the county, to the same extent as judgments of the court, from the time of filing the transcript. [643]

NOTES: — The lien attaches from the time of filing of the transcript, and ceases at the end of ten years from the date of the judgment.

An execution issued by a justice of the peace operates as a lien upon all the personal property of the judgment debtor liable to be seized on it, from the day and hour when it came into the constable's hands, if such day and hour be endorsed upon such execution.

475. **Death of judgment debtor; heirs, etc., when to show cause:** In case of the death of any judgment debtor, the heirs, devisees, or legatees of such debtor, or the tenant of real property owned by him and affected by the judgment, and the personal representatives of the decedent, may, after the expiration of one year from the time of granting letters testamentary or of administration upon the estate of the decedent, be summoned to show cause why the judgment should not be enforced against the estate of the judgment debtor in their hands respectively. [651]

476. **Death of one joint judgment debtor; estate liable:** When two or more persons shall be jointly liable on a contract or judgment, and either of them shall die, his estate, executors, and administrators shall be liable for the failure to perform the contract and for the payment of the judgment, to the same extent and in the same manner as if such contract or judgment were joint or several. [654]

CHAPTER 18.

Manure and Fertilizers.

I. Manure.
II. Fertilizers.

I. Manure.

477. **Manure:** The general rule is, that a tenant under a farming lease or contract has no right to remove from the premises so occupied any manure made in whole or in part from the produce of the land without an express stipulation to that effect in the agreement. And the owner of the farm may maintain an action for its value, if the tenant take it away from the farm. If, however, a tenant in the rightful use of the premises, feed cattle thereon with supplies procured from sources foreign to the land, he may remove all the manure made by them which is not commingled with the soil, using reasonable care not to injure the premises in such removal. When any such supplies brought on the premises are fed along with the produce of the farm, the manure resulting therefrom, can only be taken away by the tenant, when he is able to specify how much feed he brought to the premises and what proportion it bore to the whole amount used. He must be able to distinguish the proportion made from his own supplies. — 87 D. 611; 55 D. 550.

II. Fertilizers.

478. **Sample submitted to state chemist; affidavit:** Before any commercial fertilizer is sold or offered for sale, in the state of Indiana, the manufacturer, dealer, importer, agent, or party who causes it to be sold or offered for sale, by sample or otherwise, within the state of Indiana, shall file with the state chemist of Indiana a statement that he desires to offer for sale in Indiana material for manurial purposes, and also a certificate, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name under which the fertilizer will be sold, the names of the towns in Indiana in which it will be offered for sale, and the minimum percentage of nitrogen, of potassium oxide (K^2O) soluble in water, of phosphoric acid (P^2O^5), and in the case of acidulated goods the minimum percentage of water, soluble and reverted phosphoric acid, and of insoluble phosphoric acid which the manufacturer or party offering the fertilizer for sale guarantees the fertilizer to contain. [7432]

479. Anaylsis; label: It shall be the duty of the state chemist to register the certificate provided for in section one (1) of this act and to print the facts set forth in the certificate in the form of a label. Such label shall be plainly printed in the English language and shall set forth the name of the manufacturer, the location of the principal office of the manufacturer, the name of the fertilizer, and the minimum percentage of nitrogen, of potassium oxide, (K^2O) soluble in water, of phosphoric acid (P^2O^5), or in the case of acidulated goods, of soluble and reverted phosphoric acid, and of insoluble phosphoric acid which the manufacturer guarantees the fertilizer to contain. The state chemist shall furnish such labels to manufacturers or agents desiring to sell, or to offer or expose for sale, the fertilizer so registered and in such numbers as such manufacturers or agents may desire: *Provided*, That the state chemist shall not be required to furnish a less number than five hundred for any one fertilizer, and shall only be required to furnish them in multiples of five hundred, and all labels shall be good until used. [As amended, Acts 1901, p. 413.]

480. Label to be affixed: Any person, company, corporation or agent that shall manufacture, offer for sale, sell or expose for sale by sample or otherwise, or have in his possession for his own use, or for the use of another, any commercial fertilizer, shall affix or cause to be affixed to every package or sample of such fertilizer in a conspicuous place on the outside thereof the label of the state chemist provided for in section two (2) of this act. When fertilizers are sold in bulk a label shall be delivered to the purchaser with each 200 pounds or fraction thereof. [7434]

481. Selling without label punished: Any person, company, corporation or agent that shall offer for sale, sell or expose for sale, by sample or otherwise, or have in his possession for his own use or for the use of another, any package or sample of any quantity of any commercial fertilizer which does not have affixed to it the label of the state chemist, or which shall be found by an analysis made by or under the direction of the state chemist to contain a smaller percentage of any one of the ingredients mentioned in section two of this act than the label of the state chemist shows it is guaranteed to contain, or which shall be labeled with a false or inaccurate guarantee; or any person, company, corporation or agent that shall use the name or title of the state chemist on a label not furnished by the state chemist shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars for the first offense and in the sum of one hundred dollars for each subsequent offense. In all litigation arising from the purchase or sale of any commercial fertilizer in which the composition of the same may be involved, a certified copy of the official analysis signed by the state chemist shall be accepted as conclusive proof of the composition of such fertilizer: *Provided*, That nothing in this act shall

be so construed as to prevent a farmer mixing fertilizer materials, sold under the provisions o fthis act, for his own use, or to prevent manufacturers, who have complied with the provisions of sections one, two and three of this act, having in stock raw material for the manufacture of fertilizers, or to prevent the state chemist, or the United States agricultural experiment station for Indiana, or any person or persons deputized by said state chemist, making experiments with agricultural chemicals for the advancement of the science of agriculture. [7435]

482. **State chemist; fees:** The professor of agricultural chemistry at Purdue University is hereby constituted the state chemist of Indiana, and it shall be his duty to comply with the provisions of this act so far as they relate to him, and for his expenses and compensation in inspecting and analyzing fertilizers, he shall receive for analyzing a sample of fertilizer and making his certificate of the same, two dollars, for labels furnished, one dollar per hundred. The state chemist or any person by him deputized is hereby empowered to procure from any package of commercial fertilizer offered for sale or found in Indiana, a quantity of fertilizer not exceeding two pounds: *Provided*, Such sample shall be drawn during reasonable business hours, or in the presence of the owner of the fertilizer, or of some party claiming to be the representative of the owners. Any person who shall prevent or strive to prevent the state chemist, or any person deputized by the state chemist, from inspecting and obtaining samples of fertilizers as provided for in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty dollars for the first offense, and not less than one hundred dollars for each subsequent offense. The state chemist is hereby empowered to prescribe and enforce such rules and regulations relating to fertilizers as he may deem necessary to carry into effect the full intent and meaning of this act. [7436]

483. **Term "commercial fertilizer" defined:** The term "commercial fertilizer," as used in this act, shall be taken to mean any and every substance imported, manufactured, prepared or sold to fertilizing or manurial purposes, except barn-yard manure, marl, lime, wood ashes and plaster.

CHAPTER 19.

Nuisances.

484. Nuisance: Whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. [291]

[Approved February 27, 1909.]

485. Public nuisance; penalty for maintaining: Every person who shall erect, or continue and maintain any public nuisance, to the injury of any part of the citizens of this state, shall, on conviction, be fined not exceeding one hundred dollars. [2440.]

486. Public nuisance defined: Whoever erects, continues, uses or maintains any building, structure, or place for the exercise of any trade, employment or business, or for the keeping or feeding of any animal, animals or fowls, which, by occasioning noxious exhalation or noisome or offensive smells, becomes injuries to health, comfort or property of individuals or the public; or whoever causes or suffers any offal, filth or noisome substance to be collected or to remain in any place to the damage, prejudice or discomfort of others or the public, or whoever obstructs or impedes, without legal authority, the passage of a nacigable river, harbor or collection of waters, or unlawfully diverts any stream of water from its natural course or state, to the injury of others, or whoever obstructs or encumbers by fences, buildings, structures or otherwise, any public grounds, or erects, continues or maintains any obstruction to the full use of property, so as to injure property of another or essentially to interfere with the comfortable enjoyment of life, shall, on conviction, be fined not less than ten nor more than five hundred dollars; *Provided,* That nothing in this section shall prevent the board of trustees of towns and the common councils of cities from enacting and enforcing such ordinances within their respective corporate limits as they may deem necessary to protect the public health and comfort. [2441.]

487. Who may sue to abate a nuisance: Any person affected by a nuisance may bring an action to abate the same.

488. Nuisance; spite fence: SEC. 1. That any fence or other structure in the nature of a fence unnecessarily exceeding six feet in

height, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a nuisance.

489. **Damages and abatement:** SEC. 2. Any such owner or occupant injured either in his comfort or the enjoyment of his estate by such nuisance, may have an action for the damages sustained thereby and for the abatement of such nuisance and all other remedies for the prevention of nuisances, and the provisions of law concerning actions for nuisance shall be applicable thereto.

CHAPTER 20.

Offenses.

I. Against property.
II. Miscellaneous offenses.

I. Against Property.

490. **Arson (destroying by fire):** Whoever wilfully and maliciously burns or atempts to burn any dwelling house or other buildings, finished or unfinished, occupied or unoccupied, whether the building be used or intended for a dwelling house or for any other purpose; or any boat, wharf boat, watercraft or vessel, railroad car, interurban or street car, finished or unfinished, or any reaping machine, mowing machine, threshing machine, separator, clover-huller, vehicle, plow, cultivator, or any other agricultural or farming implement; or any bridge whether wholly within this state or not, or any cord-wood in a pile, or any rick, stack or shock of grain, hay or straw, or any grain not severed from the ground, or any fence of whatever material constructed; or the material intended for the construction of any such house, building, boat, bridge, fence, reaping machine, mowing machine, threshing machine, separator, clover huller, vehicle, plow, cultivator or any other agricultural or farming implement or any railroad car, interurban or street car; or any tan bark, tree, timber or lumber, or water-tank connected with a railroad; the property so burned or attempted to be burned, being of the value of twenty dollars or upwards, and being the property of another, or being insured against loss or damage by fire, and the burning or attempt to burn being with intent to prejudice or defraud the insurer, is guilty of arson, and, on conviction, shall be imprisoned in the state prison not less than two years nor more than twenty-one years, and fined not exceeding double the value of the property burned or attempted to be burned; and should the life of any person be lost thereby, such offender shall be deemed guilty of murder in the first degree, and shall suffer death or be imprisoned in the state prison during life.. [2260]

491. **Burning woods and prairies:** Whoever maliciously or wantonly sets fire to any woods, or to anything growing or being upon any marsh, prairie or grounds, not his own property, or maliciously or wantonly permits any fire to pass from his own marsh, prairie or grounds, to the injury or destruction of the property of any other person, shall, on conviction, be fined not less than five dollars nor more than one hundred dollars, to which may be added imprisonment in the county jail not exceeding thirty days. [2261]

492. **Woods, setting on fire:** That any person who shall set fire to any woods belonging to another or shall place a fire on his property and permit it to spread to the woods of another shall be liable to a fine of not less than $5 or more than $50, and furthermore, shall be liable to the owner or owners for the full damages sustained by reason thereof, and it shall be the duty of the prosecuting attorney of the county to faithfully investigate and prosecute each and every case, and any failure to do so by him shall be sufficient evidence for his removal from office, and his bondsmen shall become liable for the full damage hereof sustained. [2262]

493. **Road supervisor; duty as to fire:** It shall be the duty of the township road supervisor when any woods, as in section 1, shall become on fire in his road district to employ such help as he may need to extinguish such fire, and himself and such help as he employs shall be paid by the township trustee from the general expense funds of the township at the rate of $1.50 per day for the time actually occupied in extinguishing such fire. [2263]

494. **Larceny of dog:** Whoever feloniously steals, takes, or carries away any dog, male or female, upon which dog no taxes are delinquent, and which shall have been listed for taxation at its true cash value as personal property is listed, shall, on conviction, suffer the punishment prescribed for larceny: *Provided*, That this section shall not apply to any dog that is shown to have chased, worried, maimed or killed sheep. [2271]

495. **Secreting a will:** Whoever, during the life of a testator or after his death, feloniously steals, takes or carries away a will, codicil or other testamentary instrument executed by such testator, or, for a fraudulent purpose, destroys or secretes the same, on conviction, shall be imprisoned in the state prison not less than two years nor more than fourteen years, fined not exceeding one thousand dollars and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [2275]

496. **Carrying off fruits or products:** Whoever unlawfully enters upon the lands of another and severs from the soil any product or gruit growing thereon, the property of another, of the value of ten cents or upwards, or shall sever from any building, or from any gate, fence or other railing or enclosure, the property of another, or any part thereof, of the like value, on conviction, shall be fined not exceeding one hundred dollars, to which may be added imprisonment in the county jail not more than six months. [2279]

497. **Embezzlement by tenant:** Whoever, being a tenant, with intent to defraud his landlord, unlawfully disposes of, or applies or converts to his own use without the authority or consent of such landlord, any part of the crop growing or raised on the leased premises that belongs to the landlord under his contract of leasing with such tenant,

or on which the landlord holds a lien under the laws of the state of Indiana, or who with intent to defraud, unlawfully disposes of or applies or converts to his own use any part of the crop raised upon leased premises, upon which there is any lien for advances of money or property is guilty of embezzlement, and upon conviction shall be imprisoned in the state's prison not more than three years nor less than one year, or maye be imprisoned in the county jail for any period of time not exceeding six months; or, may be fined in any sum not exceeding $100, within the discretion of the court or jury. [2290]

498. **Crops, landlord"s lien, sale:** That whoever unlawfully sells or disposes of any grain or other farm products upon which there is a chattel mortgage or landlord's lien, without giving notice, in writing, to the purchaser that such lien exists thereon,, or whoever before or after maturity of any crops sells or agrees to deliver to any person, firm or corporation any grain or other farm products, and receives an advancement from such person, firm or corporation, in money or other thing of value, on account of such sale, and after the maturity of such grain or other farm products sells and delivers such grain or other farm products to any person, firm or corporation, other than such purchaser, without first refunding the advancement so received thereon, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state's prison not less than one year nor more than three years, or fined in any sum not exceeding one hundred ($100) dollars or both. [2300]

499. **Telegraph or telephone; injury:** Whoever maliciously or mischievously injures any telegraph pole, electric light pole or electric car pole, telephone pole, or the wire or any part of the apparatus connected therewith, on conviction shall be fined not less than five dollars nor more than five hundred dollars and imprisoned in the county jail not less than thirty days nor more than six months. [2302]

500. **Tombstones, defacing, removal:** Whoever wilfully, mischievously or maliciously disfiures, defaces or removes any tombstone, monument, gravestone or other structure erected to perpetuate the memory of any deceased person, persons, or event; or whoever wilfully, mischievously or maliciously disfigures, defaces or removes any fence, railing, structure or any other work in or around any public or private monument, cemetery or burial place, or any tree, shrub or plant therein, shall on conviction, be fined not less than five dollars nor more than five hundred dollars, to which may be added imprisonment in the county jail not more than six months. [2309]

501. **Highway, canal, obstructing:** Whoever, in any manner, wrongfully obstructs any public highway, tow-path, canal, turnpike, plank or coal road, or injures any toll or other bridge, or tol lgate, culvert, embankment or lock, or makes any breach in any canal, or injures any material used in the construction of such roads, canals or structures,

shall, on conviction, be fined not more than five hundred dollars, to which may be added imprisonment in the county jail not less than ten days nor more than three months. [2311]

502. **Traction engine; using on highway:** It shall be the duty of any owner or person in charge of a traction or road engine, while using such engine on any public highway, or on any street or alley of any town or city, upon the approach of any horse, team or teams, to drive such engine to one side of the highway, street or alley, when practicable, and to stop such engine until such horse, team or teams have passed; and the whistle of such engine shall not be sounded while such horse, team or teams are passing. Any person violating any provision of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than five dollars nor more than fifty dollars. [2312]

503. **Highway; heavy hauling:** It shall be unlawful for any person to haul over any turnpike, macadam, or gravel road (the term "gravel road" to include any road graded and graveled with not less than one yard of gravel to eight feet in width and nine feet in length of such road) at any time when the road is thawing through or by reason of wet weather is in condition to be cut up or injured by heavy hauling, a load on any vehicle with tires of less than three inches in width, the combined weight of which load and vehicle, including the driver, shall be more than twenty-five hundred pounds; or on a vehicle with tires of three inches and less than four inches in width, the combined weight of which load, vehicle and driver, shall be more than three thousand pounds; or on any vehicle with tires of four inches and less than five inches in width, the combined weight of which load, vehicle and driver, shall be more than thirty-five hundred pounds; or on any vehicle with tires five inches or over in width, the combined weight of which load, vehicle and driver, shall be more than thirty-eight hundred pounds. Any person violating any provision of this section shall, on conviction, be fined not less than five dollars nor more than fifty dollars for each load so hauled; *Provided*, That any road supervisor or gravel road superintendent shall have police power to arrest upon sight any person who is seen violating, or by warrant any person who has violated, any of the provisions of this section within the county or township for which such road supervisor or gravel road superintendent is elected or appointed, and that, on conviction of the defendant in such cause, there shall be assessed by the court trying the same a fee of two dollars in each case, to be paid to the person making such arrest. [2313]

504. **Friction lock on wagons:** That the board of county commissioners may by order require every person or persons hauling loads with wagons on the public highways, turnpikes, gravel or macadamized roads, to have a friction lock on the wagon, so as not to cause a dead lock of the wheel when necessary to lock same. [2314]

505. **Penalty:** Whoever violates section one of this act shall be

guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed twenty dollars for each and every offense. [2315]

506. **Shade trees; destroying or injuring:** Whoever unlawfully removes, destroys, cuts or girdles any shade tree, or carries off or removes or in any wise injures the protecting box of any shade tree, in any city, town or village of this state, or in any public highway, shall be fined not less than three dollars nor more than fifty dollars; but this section shall not be so construed as to prevent any owner of grounds from making any necessary alterations in the works or trees on or adjacent to such grounds. [2316]

507. **Landmark; altering or removing:** Whoever unlawfully displaces or removes any monument erected for the purpose of designating or perpetuating the corner or any other point in the boundary of any tract of land, or maliciously or mischievously defaces or alters the mark upon any monument, landmark or bearing tree used for the purpose of designating any point, course of line in the boundary of any tract of land, or wilfully cuts down or removes any monument, landmark or bearing tree upon which such mark shall be made, with the intent to destroy or efface such mark, shall on conviction, be fined not less than five dollars nor more than two hundred dollars, to which may be added imprisonment in the county jail not less than ten days nor more than six months. [2317]

508. **Dams or drains; injury:** Whoever injures any dam, drain, embankment, ditch or other construction made in pursuance of law, or made for the protection of any highway, railroad or bridge, or wilfully destroys or throws down any milepost, guide post or guide board, or alters or effaces any inscription or device thereon, shall, on conviction, be fined not exceeding fifty dlolars, to which may be added imprisonment in the county jail not exceeding ten days. [2318]

509. **Legal notices; defacing:** Whoever maliciously or mischievously tears down, removes, destroys or defaces any legal advertisement, handbill, or other public notice lawfully posted up in any place not belonging to or occupied by such person, shall, on conviction, be fined not exceeding ten dollars. [2319]

510. **Bills; posting on buildings:** Whoever paints, prints, pastes, stencils or otherwise marks upon, or in any manner places upon or affixes to any building, fence, wall, or tree, without the consent of the owner thereof, any word, letter, character, figure, sentence or device, or any handbill or notice, shall, on conviction, be fined not more than fifty dollars nor less than five dollars; but this section shall not apply to the posting of any handbill or notice of any public sale of property by any sheriff, administrator, executor or guardian, or to any notice required by any law to be posted. [2320]

II. Miscellaneous Offenses.

511. **Profanity:** Whoever, being over fourteen years of age, profanely curses, swears, avers, or imprecates by or in the name of God, Jesus Christ or the Holy Ghost, in a public place or where another person or persons may be offended thereby, is guilty of profanity, and, on conviction, shall be fined not less than one dollar nor more than three dollars for each offense. [2363]

512. **Stallions; letting in public:** Whoever permits any stallion or jack to run at large at any place, or who shall keep or let to mares or jennets any stallion or jack, within the limits of any city, town or village, or within two hundred yards thereof, except within an enclosure by which the view of the inhabitants of such city, town or village, or vicinity thereof is obstructed, shall be fined three dollars for every day such offense is committed. [2373]

513. **Cruelty to children:** Any person who shall cruelly ill-treat, abuse, overwork or inflict unnecessary cruel punishment upon any infant or minor child, and any person having the care, custody or control of any minor child, who shall wilfully abandon or neglect the same, shall be guilty of a misdemeanor, and upon conviction thereof by any justice of the peace, mayor, police judge or criminal court, shall be fined not less than five dollars nor more than fifty dollars for each offense, to which may be added imprisonment not exceeding thirty days. [2622]

514. **Disclosure of telegraph or telephone message; penalty:** Whoever being an operator, clerk, servant, messenger or employe of any telegraph company or telephone company, discloses the contents of any dispatch or message sent or received from any office of such company, or any conversation or communication between persons over the line of such telephone company, except to a court of justice, or to a person authorized to know the same, shall, on conviction, be fined not less than ten dollars nor more than one hundred dollars. [2630]

515. **Vagrancy:** Any person over the age of fourteen years, and physically able to perform manual labor, who has not made reasonable effort to procure employment, or who has refused to labor for compensation when labor is offered, who is found in a state of vagrancy or practicing common begging, shall, on conviction, be fined not less than five dollars nor more than fifty dollars. [2639]

516. **Tramps:** Whoever, except a female or a blind person or cripple, not being in the county in which he usually lives or has his home, is found going about begging and asking subsistence by charity, shall be taken and deemed to be a tramp. Any tramp who enters a dwelling house or enclosure, or yard about a dwelling house, against the will or without the permission of the owner or occupant thereof, or does not, when requested, immediately leave such place, or does or threatens to do any injury to the person, or real and personal property of another, shall,

on conviction, be fined not less than five dollars nor more than fifty dollars. [2640]

517. **Malicious prosecution:** If any person shall maliciously and without probable cause attempt to cause an indictment to be found, or other prosecution to be commenced against any person for any crime or misdemeanor; or if two or more persons shall conspire together for such purpose, the person so sought to be indicted or otherwise prosecuted being innocent, such person or persons so offending, shall, on conviction, be fined not more than one thousand dollars, to which may be added imprisonment in the county jail not less than ten days nor more than six months. [2648]

518. **Taxables; giving false list:** Whoever, when requested by any officer or board authorized by law to assess property for taxation, fails to give a true list of all his taxable property, or to take and subscribe any oath in that behalf, as required by law, or shall fix a fraudulent value where an oath is not required on such property, shall, on conviction, be fined not less than ten dollars nor more than five hundred dollars. [2657.]

519. **Highway; obstructing:** Whoever sets any stone or other monument in any public road or highway, in order to mark a section corner, or any division of lands, in such manner that the same projects above the surface of the ground, shall, on conviction, be fined not less than five dollars nor more than twenty-five dollars. [2658.]

520. **Highway; rubbish:** Whoever puts, throws, dumps or leaves any tin can, old iron, brush, boxes, tools, machinery, vehicles, rubbish, brick, wood, logs, glass, glassware, glass bottles, glass jars, broken glass, broken glassware, or debris of any kind or character whatsoever in, upon or within the limits of any public highway, except by direction of the township trustee, superintendent or board of county commissioners shall, on conviction, be fined in any sum not exceeding fifty dollars. [2659.]

521. **Appropriating estray:** If the taker-up of estray property shall suffer the same to be taken out of the county for more than three days at a time, or shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he or any officer shall knowingly and wilfully violate any of the provisions of the law regulating the taking up of estrays, such person or officer shall, on conviction, be fined not less than five dollars nor more than one hundred dollars. [2661.]

522. **Highways; racing:** Whoever knowingly suffers his horse, mare or gelding to be run in a horse-race, along any public highway in this state, and whoever acts as a rider in any such race, shall, on conviction, be fined not less than five dollars nor more than fifty dollars. [2664.]

523. **Running horses in city or town:** Whoever runs horses, mares or geldings or shoots at a mark within the limits of any city, town or village, or along or across any street thereof, shall, on conviction, be fined not more than three dollars. [2665.]

743. **Obstructing drainage:** Any person who shall obstruct, injure or destroy any work constructed in pursuance of any law of this state for the drainage of lands, shall, on conviction, be fined in any sum not less than ten nor more than one hundred dollars to which may be added imprisonment in the county jail for a period not exceeding three months, and shall also be liable for damages to such person or persons as may have suffered damages thereby. [2686.]

524. **Oleomargarine; sale of:** Whoever sells or has in his possession, with the intent to sell, or expose for sale, or whoever keeps on any table at any hotel, or at any public or private boarding-house, any butter other than that made from pure milk, without first labeling the same in large letters *Oleomargarine*, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not more than fifty dollars nor less than ten dollars. [2722a.]

CHAPTER 21.

Sunday and Its Observance.

525. **Sabbath breaking:** Whoever, being over fourteen years of age, is found on the first day of the week, commonly called Sunday, rioting, hunting, fishing, quarreling, at common labor or engaged in his usual avocation, works of charity and necessity only excepted, shall be fined not less than one dollar nor more than ten dollars; but nothing herein contained shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travelers and those engaged in conveying them, families removing, keepers of toll bridges and toll gates, ferrymen acting as such persons engaged in the publication and distribution of news. [2364]

526. **Barbering on Sunday:** That it shall be unlawful for any person or persons to carry on or engage in the art or calling of hair cutting, shaving, hair dressing and shampooing, or in any work pertaining to the trade or business of a barber, on the first day of the week, commonly called Sunday, except such person or persons shall be employed to exercise such art or calling in relation to a deceased person. [2365]

527. **Shops to be closed:** That it shall be unlawful for any such person or persons, association, firm, corporation or club to keep open their shops or places of business aforesaid, on said first day of the week, commonly called Sunday, for any of the purposes mentioned in section one of this act: *Provided, however,* That nothing in this act shall apply to persons who conscientiously believe the seventh day of the week should be observed as the Sabbath and who actually refrain from secular business on that day. [2366]

528. **Penalty:** Every person violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense, to which may be added imprisonment in the county jail not more than thirty days. [2367]

529. **Sunday hunting prohibited:** Whoever hunts or shoots song birds, or any species of game, with any kind of firearms on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten (10) nor more than fifty (50) dollars. [2368]

[Became a law without Governor's signature, March 8, 1909.]

530. **Sabbath breaking; Sunday baseball:** SEC. 1. Whoever, be-

ing over fourteen years of age, is found on the first day of the week, commonly called Sunday, rioting, hunting, fishing, quarrelling, at common labor or engaged in his usual avocation, works of charity and necessity only excepted, shall be fined not less than one dollar nor more than ten dollars; but nothing herein contained shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travelers and those engaged in conveying them, families removing, keepers of toll bridges and toll gates, ferrymen acting as such and persons engaged in the publication and distribution of news, or persons engaged in playing the game of baseball between the hours of one o'clock P. M. and six o'clock P. M. and not less than one thousand feet distant from any established house of worship or permanent church structure used for religious services, or any public hospital or private hospital erected prior to the passage of this act. [March 8, 1909.]

531. **Liquor; selling on Sunday and holidays:** Whoever shall sell, barter or give away, to be drunk as a beverage, any spirituous, vinous, malt, or other intoxicating liquors, upon Sunday, the fourth of July, the first day of January, the twenty-fifth day of December, commonly called Christmas, Thanksgiving day as designated by proclamation of the governor of this state, or the president of the United States, or any legal holiday, or upon the day of any state, county, township, primary or municipal election in the township, town or city where the same may be holden, or between the hours of eleven o'clock P. M. and five o'clock A. M., shall, on conviction, be fined not less than ten dollars nor more than fifty dollars, to which may be added imprisonment in the county jail or workhouse not less than ten days nor more than sixty days. [2492]

532. **Liquor; druggist selling on Sunday:** It shall be unlawful for any druggist or druggist's clerk to sell, barter, or give away any spirituous, vinous, malt or other intoxicating liquor on Sunday, or upon the fourth of July, the first day of January, the twenty-fifth day of December, commonly called Christmas, Thanksgiving day or any legal holiday, or upon the day of an state, county, township, primary or municipal election in the township, town or city where he same may be holden, or between the hours of eleven o'clock P. M. and five o'clock A. M., of any day, unless the person, to whom the same is sold, bartered or given, shall have first procured a written prescription therefor from some regular practicing physician of the county where the same is sold, bartered or given away. And any person so offending shall, on conviction, be fined not less than ten dollars nor more than fifty dollars.

533. **When attachment may issue on Sunday:** An order of attachment may be issued an executed on Sunday, if the plaintiff will show in his affidavit that the defendant is about to abscond on that day, to the injury of the plaintiff. [954]

CHAPTER 22.

Thistles, Etc.

534. Canada thistles; allowing to grow: Any person who shall knowingly allow Canada thistle or thistles to grow and mature, or shall allow any Canada thistle or thistles to grow until they or any of them become of the length of six (6) inches, measuring from the surface of the soil to the end or the tip of the stem above the surface of the ground, upon his, her or their land, or upon any land which they shall occupy or have under their charge and control; and every supervisor of roads or other officer, having charge of or control over highways, who shall knowingly allow any Canada thistle or thistles to grow or mature, or grow to the length of six (6) inches as above defined, in any public highway, street or alley over which such supervisor or officer has supervision; and every section boss, roadmaster or other officer of any railroad having charge of or control over such railroad property, who shall knowingly allow Canada thistle [s] or any Canada thistle to grow or mature, or to grow to the length of six (6) inches as above defined, on any lands held, owned or used by said company or by any person operating such railroad, depot or station grounds, as right of way or otherwise, for the portion of said railroad over which such section boss, roadmaster or other officer has supervision, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined, for the first offense, in any sum not more than one ($1) dollar, and for each subsequent offense in any sum not more than ten ($10) dollars. [2614]

535. Complaint to supervisor: If any resident in any township of this state shall make complaint to any road supervisor in the township in which such resident may live that any owner or occupant of land (as described in section 627 of this act), in the said road supervisor's district, is allowing Canada thistle to grow (as defined in section 627 of this act), it shall be the duty of the said road supervisor to notify the said owner or occupant of said land to within five (5) days cut the said thistles off below the surface of the ground. Any owner or occupant of land, after having been notified as aforesaid, who shall fail to perform the duties required of him by the preceding section and by section 627a of this act, shall be guilty of the offense described in section 627 of this act and liable to the penalties provided therefor. [2615]

536. Failure of supervisor; township trustee or mayor: Any supervisor who shall fail to perform the duties required of him by this act

shall be guilty of the offense described in section 627 of this act, and liable to the penalties therefor: *Provided,* That in case any road supervisor or other officer having charge of any public street or highway, in this state, shall be guilty of allowing Canada thistles to grow upon any public highway, road, or street (as described in section 627 of this act], it shall be the duty of the township trustee in case the offense shall be committed outside of the limits of any incorporated town or city of this state; or in case it shall be inside the limits of any incorporated town or city, it shall be the duty of the mayor or president of the board of trustees of such town or city to perform the duties required of the road supervisor in section 627a of this act. [2616]

537. **Convictions; fee for supervisor:** For every conviction under this act brought about by a road supervisor or other officer whose duty it shall be to enforce the provisions hereof, he shall receive five ($5) dollars, to be taxed as other costs in the case. [2617]

538. **Grain containing thistles:** Whoever knowingly sells or barters any seed or any grain of any kind whatever, containing Canada thistle's seed, shall, on conviction, be fined not less than twenty dollars nor more than two hundred dollars. [2618]

CHAPTER 23.

Time.

539. **Time, how computed:** The time within which an act is to be done, as herein provided, (in civil proceedings), shall be computed by excluding the first day and including the last. If the last day be Sunday it shall be excluded. [1350.]

540. **Meaning of "month" and "year":** The word "month" shall mean a calendar month, and the word "year" shall mean a calendar year, unless otherwise expressed; and the word "year" be equivalent to the words "year of our Lord." [Fifth paragraph of Sec. 240.]

541. **Holidays; commercial paper:** The first day of the week, commonly called Sunday; the first day of January, commonly called New Year's day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day; any day appointed or recommended by the president of the United States or the governor of Indiana as a day of public fasting or thanksgiving; the twelfth day of February, commonly called Lincoln's birthday; the twenty-second day of February, commonly called Washington's birthday; the thirtieth day of May, commonly called memorial day; the first Monday of September, commonly called labor day; and the day of any general, national or state election, shall be legal holidays within the state of Indiana. And when any of said holidays (other than Sunday) comes on Sunday the Monday next succeeding shall be the legal holiday.

542. **Saturday half-holiday in cities of 35,000:** It shall be lawful for banks, trust companies and safe deposit institutions in all cities in this state, which have or hereafter may have a population of more than thirty-five thousand inhabitants, according to the last preceding United States census, to close their doors for business at twelve (12) o'clock noon on each and every Saturday in the year, and every Saturday in the year after [twelve] (12) o'clock noon shall, in addition to the legal holidays mentioned in section one (1) of this act, be a legal half holiday for such banks, trust companies and safe deposit institutions and the business thereof.

543. **When negotiable instruments fall due on Sunday or holidays; no days of grace:** All bills of exchange, bank checks, promissory notes and other negotiable instruments shall be payable at the time fixed therein, without grace. When the day of maturity falls

upon Sunday, or a legal holiday, the instrument shall be payable on the next succeeding business day. Negotiable instruments falling due on Saturday shall be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. [9088.]

CHAPTER 24.

Trees and Timber.

I. On or near boundary line.
II. In highway.
III. Shade trees.

I. On or near boundary line.

544. On this subject the decisions of the courts in various cases are given in the language of the court rendering them. They are as follows:

"Trees standing so nearly upon the line between lands that portions of its body extend into each, the same is the property in common of the landowners. And neither of such owners is at liberty to cut the tree without the consent of the other, nor to cut away the part which extends into his land, if he thereby injures the common property in the tree." I Washburn on Real Property, 7 Sec. a—29 L. R. A. 585.

"Trees standing wholly within the boundary line of one's land belong to him although the roots and branches of such trees may extend into the adjacent owner's land. But the adjacent owner may lop off the branches or roots of such up to the line of his land." 29 L. R. A. 585.

Trees on a boundary line belong to the adjoining owners as tenants in common, and one joint owner may be enjoined at the suit of the other from cutting down such trees, although such plaintiff had cut down similar trees before. Musch vs. Burkhart, 83 Iowa 801.

A tree standing on the boundary line is the common property of both parties whether marked or not, and trespass will lie if one destroys it without the consent of the other. Griffin vs. Bixby, 12 N. H. 454.

The destruction of forest trees along a disputed boundary line may be enjoined pending a suit to establish such line. De La Croix vs. Villere, 11 La. Ann. 39.

If my tree blow down and fall on the land of my neighbor, I may go on and take it away, and the same rule prevails where fruit falls on the land of another, but if the owner of a tree cut the loppings so that they fall on another's land, he cannot be excused for entering to take them away on the ground of necessity, because he might have prevented it. Newkirk vs. Sabler, 9 Barb. 655.

545. Projecting trees near a boundary line a nuisance; when: Trees projecting over another's land are only nuisances as to the projection and may be cut off, or the party aggrieved may sue for damages or

have the nuisance abated. The projecting roots may also be abated, but the tree cannot be cut down. Grandona vs. Lovdal, 70 Cal. 611.

Branches which overhang property adjoining that on which the trees are growing constitute a nuisance which the owner of such adjoining property may remove. Hickey vs. Michigan C. R. Co., 96 Mich. 498.

II. Trees in Highway.

546. **Trees in highway are property of adjacent owner:** Trees in the highway are the property of the adjacent owner; and if they encroach upon the highway and must be removed, he has a right and must be afforded reasonable opportunity to take them as living trees and transplant them elsewhere. The order of removal should be given to him and he should be allowed a reasonable time to comply with it before the commissioners should act further. 21 L. R. A. 731.

547. **Neighbor has no right to cut if tree does not overhang his land:** Where a party cut down trees standing in the street in front of his neighbor's land, on the ground that their shade made his house damp and unhealthy, but did not show that they overhung his land, he was held liable in damages. Bliss vs. Ball, 99 Mass. 598.

548. **Trees on highway; injury; penalty:** Whoever shall wilfully, maliciously or mischievously, and without right, cut down or in any way injure any tree on the public highway, shall on conviction, be fined not less than five dollars nor more than five hundred dollars. [2310.]

III. Shade Trees.

549. **Cutting down or injuring:** The cutting down or injury of shade or other ornamental trees is an irreparable injury, which the courts will prevent by injunction. B. & O. Ry. Co. vs. Boyd, 67 Md. 32.

Wilson vs. Mineral Point, 39 Wis. 160.

Musch vs. Burkhart, 83 Iowa, 301.

550. **Shade trees in highway:** A telegraph company has no right to trim without consent of owner of adjoining land, and is liable to such owner for the damages incurred. W. U. Tel. Co. vs. Smith, 64 O. S., 106, 115.

Telegraph, telephone and electric light and power companies, etc, are liable for negligence resulting in unnecessary injuries in cutting trees in or along the highway for running their wires, and this rule holds even if the wires are for public use.

Clay vs. Postal Teleg. Co., 70 Miss. 406.

Tissot vs. Great So. Tel. and Telephone Co., 39 La. Ann. 996.

Damages to the amount of $150 were awarded against a telephone company for cutting off the top of a handsome elm tree, standing in front of a side-walk, where the lot was centrally located and was available for high-class buildings, and the cutting was without any justification, although the agents of the company thought they had permission. Hoyt vs. Telephone Co., 60 Conn. 385.

CHAPTER 25.

Trespass.

551. A trespasser is one who passes unlawfully upon another's land, or who having come upon another's land lawfully, remains unlawfully.

NOTES: — Mere words do not constitute trespass, but an actual entry upon the land of another is not necessary, one may be guilty of trespass upon the property of another by throwing stones, or reaching over with a pole or rail upon his neighbor's land. 12 B. Mon. 442.

One who, by means of a spout, sheds and throws the water from his building upon the land of the adjoining owner is guilty of trespass and liable in damages therefor. 126 Ind. 85.

A landlord can not maintain trespass for a wrong done by a stranger while the tenant is in actual possession. 4 Ohio 433.

It will not justify searching a man's house, that one has been arrested there, having in his possession counterfeit paper. 13 O. St. 508.

The release of one of several joint trespassers operates as a discharge of all. 2 Ohio 89.

A landlord may be guilty of trespass upon his tenant.

A person may remove traps set upon his lands for the purpose of catching game.

One who paints an advertisement of his business upon the wall of a building belonging to another, is liable for damages resulting therefrom, although the tenant of the owner of such building consented. 132 Pa. St. 186.

Where one directs and procures a trespass to be committed, he is liable with those who committed it. 43 Kan. 50.

Threatened trespass, which contemplates irreparable injury, may be enjoined. 16 R. I. 15.

Where one has for a long time been in the habit of using a way across the land of another, and he believes in good faith he has a right to use it, he will not be guilty of malicious trespass for removing a fence placed across such way. 45 Ind. 388.

552. **Damages; measure of for trespass:** When the action is for the cutting of a meadow, the measure of the damages is the value of the grass before it is converted into hay. 77 Iowa 190.

In an action to recover real estate encroached upon by another, the measure of damages is not the value of the land, but the injury resulting from being deprived of its use. 58 Conn. 69.

One who cuts timber, honestly and reasonably believing that he has a right to do so, is liable only for the value of the standing timber. 41 Minn. 548.

Vindictive damages may be given when trespass is committed wilfully, and in a high-handed and threatening manner, 8 B. Mon. 432; but in ordinary cases the actual injury to the property affords a guide for the measure of damages. 5 Dana 582.

553. **Trespass on private grounds:** Whoever, being about to enter unlawfully upon the enclosed or uninclosed land of another, shall be forbidden so to do by the owner, or occupant, or his agent or servant, or who, being unlawfully upon the enclosed or uninclosed land of another, shall be notified to depart therefrom by the owner, or occupant, or his agent or servant, and shall thereafter remain upon such land or refuse to depart therefrom, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than five nor more than fifty dollars. [2280.]

554. **Trespass on public grounds:** Going upon public grounds around public building where notices are posted or other notice is given to keep off is punishable by a fine of not less than one dollar nor more than ten dollars. [2281.]

555. **Entry on state lands:** Whoever, having been removed by a proper officer from land mortgaged to the state and remaining delinquent, shall return to settle upon such land without the consent of the auditor of the county, shall, on conviction, be fined not less than five dollars nor more than one hundred dollars and imprisoned in the county jail not less than ten days nor more than thirty days. [2662.]

556. **Trespass and waste on state lands; duty of auditor of state:** The auditor of state may require the sheriff of any county in which may lie lands belonging or mortgaged to the state, to examine and report to him any trespass or waste done or permitted, whether by the mortgagor, purchaser, or other person, to the probable injury of the state.

557. **Gathering cranberries on public lands:** Whoever gathers cranberries from any of the public lands, state lands, or lands owned by non-residents, between the first day of May and the fifteenth day of September of any year, shall be fined in any sum not more than twenty-five dollars.

558. **Malicious trespass:** Whoever maliciously or mischievously injures or causes to be injured any property of another, or any public property, is guilty of malicious trespass, and, on conviction, shall be fined not more than twofold the value of the damage done, to which may be added imprisonment in the county jail not more than twelve months. [2301.]

559. **Vines or trees; injury:** Whoever cuts down or destroys, or by girdling or any other means injures any standing or growing vine, bush, shrub, sapling or tree on the land of any other person, or on land belonging to the state, or to any county or township therein, or on any land reserved or granted for the use of schools or colleges, without a license so to do from competent authority, or whoever, without such license, shall cut down or remove from any such lands, or from lands belonging to the United States, any tree, stone, timber or other valuable article, is guilty of a trespass, and, on conviction, shall be fined in five times the value of such property, to which may be added imprisonment, not exceeding twelve months in the county jail. [2308.]

CHAPTER 26.

Watercourses.

I. Streams.
II. Surface waters.
III. Subterranean waters.

I. Streams.

560. **Owner of land to clean out obstructions out of small stream:** That every person or corporation owning lands in the state of Indiana, through which flows any small stream of water, not navigable and not exceeding seventy-five feet between the banks thereof on said lands, shall clean all drifts and obstructions from the channel of such stream on said lands, by burning or cutting and removing such drifts and obstructions from such channel, so as to leave the same free and open for the flow of the water therein, between the first and fifteenth days of August in each calendar year; and when such stream flows on the line between the lands owned by two or more persons or corporations, such owner or owners of land on each side of such stream shall be required in equal proportions and in like manner to clean out and remove all such drifts and obstructions from the channel of such stream, where the same so flows between the lands of such owners, between the first and fifteenth days of August in each calendar year. [10136.]

561. **Duty of surveyor when land-owner fails to clean:** If any owner or owners of lands shall fail or refuse to clean out and remove from the channel of such stream any such drift or obstruction as provided in section one (1) of this act, any person owning land adjoining such stream, or through which such stream flows, within a distance of one mile, either up or down said stream, from the point where such drift or obstruction is, may file a sworn statement of the facts with the county surveyor of the county in which the lands and such drift or obstruction of such stream are located; and it shall then be the duty of such county surveyor to proceed and examine the premises and inquire into the truth of the statement, and if he finds the statement to be true, he shall immediately give notice in writing to the owner or owners of land who are in default, as provided in this act, or to the agent or tenant of such owner or owners of the land on which said drift or obstruction exists, to burn or clean out and remove the same from the channel of such stream within twenty days from the time of such notice; and if the owner or owners of said land, his or their agent or tenant, so notified, fail to so clean out and remove such drift or obstruction within said twenty days,

such county surveyor shall at once cause the same to be removed from the channel of such stream, at the expense of such landowner, if such stream flows through his land, and at the expense in equal proportions of the owners of the land on each side of such stream flowing between their lands, where such drift or obstruction exists; and such surveyor shall certify such expense, together with his own fees and expenses in having said work done, to the county auditor of said county, who shall place the same on the tax duplicate as an assessment upon the lands of such person, persons or corporations so in default, and the same shall be a lien upon such lands and shall be collected as other taxes: *Provided,* That the county surveyor shall receive the amount per diem for his services in such cases as is allowed him by law for other services as surveyor: *And provided, further,* That water rights acquired or operated for milling and power purposes shall not be affected by this act. [10137.]

562. **Neglect of surveyor; penalty:** Any county surveyor who shall fail or neglect to perform his duties as prescribed in this act, upon affidavit filed before a justice of the peace, shall be fined not more than twenty-five dollars nor less than five dollars. [10138.]

563. **Construction of act, ditches:** This act shall be liberally construed in favor of the objects and purposes for which it is enacted: *Provided,* That this act shall not in any way apply to any ditch or drain heretofore or hereafter constructed under the order of any board of county commissioners or any court in this state. [10139.]

564. **Pollution of streams by city, town, village, corporation or person by discharge of sewages, etc.:** Such cases were, by act approved February 26, 1909, placed within the jurisdiction of the state board of health, for investigation and remedy, upon complaint made in writing. A fine not exceeding $1,000.00 and imprisonment not exceeding six months may be imposed for violations.

565. **Obstructing or diverting water:** If any person shall wilfully obstruct any public ditch, or shall wilfully divert the water from its proper channel, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five nor more than fifty dollars, and shall also be liable for any and all damages accruing to any person or persons or corporation by such act. [2681.]

566. **Subterranean waters, disturbing, etc.:** If a landowner engage in subterranean operation knowing that he is liable to injure the waters beneath his land which supply his neighbor's well, and such injury can be prevented by a reasonable outlay, his failure to use the proper preventative means negligence, and he is liable for damages resulting therefrom. 131 Pa. St. 143.

567. **Ownership of land under stream:** The fee of the land under the waters of rivers, as far as the middle thread, is in the riparian owners. 114 Mich. 165.

[Act approved February 25, 1909.]

568. **Mineral springs; protection of:** SEC. 1. That it shall be unlawful for any person, firm, company or corporation by pumping, or by any artificial contrivance whatever, to accelerate the natural flow or produce an unnatural flow of that class of mineral medicinal waters known as sodic, saline sulphuretted waters, and containing in one liter, twenty or more cubic centimeters of hydrogen sulphid gas, and five or more cubic centimeters of carbonic acid gas; and in one million parts of water, one thousand or more parts of chlorine, and sixteen hundred or more parts of sulphuric anhydride in combination with sodium, calcium, magnesium and other elements, from any well made by boring or drilling into the earth or rock, whereby the natural flow from any mineral medicinal spring belonging to any other person, firm, company or corporation is impeded, retarded, diminished, diverted or endangered; or the quality of its waters is impaired; or the quantity of its hydrogen sulphid gas, carbonic acid gas or mineral ingredients diminished: *Provided,* That said natural mineral medicinal spring shall contain in one liter not less than twenty cubic centimeters of hydrogen sulphid gas, and not less than five cubic centimeters of carbonic acid gas; and in one million parts of water, not less than one thousand parts of chlorine, and not less than sixteen hundred parts of sulphuric anhydride in combination with sodium, calcium, magnesium and other elements.

569. **Injunction:** SEC. 2. Any tax-paying citizen of the state may maintain an action to restrain any person, firm, company or corporation from committing any of the unlawful acts specified in section one (1) of this act, in any circuit court where such citizen resides and is assessed for taxes.

570. **Violation a misdemeanor; penalty:** SEC. 3. Whoever maliciously or mischievously violates any of the provisions of section one (1) of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars; and for a second offense may be fined in any sum not exceeding one thousand dollars.

CHAPTER 27.

Weights and Measures.

571. Standard of weights and measures; county board to procure: Each board of county commissioners shall procure a set of the following measures and weights: One measure of one foot, or twelve inches, English measure, so-called; also one measure of three feet, or thirty-six inches, as aforesaid; also one half-bushel measure (which shall contain one thousand and seventy-five and one-fifth solid inches), and one gallon measure (which shall contain two hundred and thirty-one solid inches), which measures are to be of wood or of any metal the court may think proper; also one set of weights commonly called avoirdupois weights; which weights and measures shall be sealed with the name or initial letters of the county, and shall be kept by the county auditor, for the purpose of trying and sealing the weights and measures used in his county. [10518.]

572. Notice to public; auditor's duty; sealing: As soon as such board of county commissioners shall have furnished the set of weights and measures as aforesaid, it shall cause notice thereof to be given, at the court house door, for one month; and any person desirous of having his weights and measures tried by the county standard shall apply to the county auditor of the county in which he shall live, and if they correspond with the standard, the county auditor shall seal them with the seal provided for that purpose. [10519.]

573. Standard weights and measures: The avoirdupois weight of beef or pork in each barrel shall be two hundred pounds; and of flour in each barrel, one hundred and ninety-six pounds; of sorghum molasses, eleven pounds to the gallon; of hay or straw, two thousand pounds shall be given and taken for a ton. A bushel of the respective articles hereinafter mentioned shall mean the amount of weight, avoirdupois, in this section specified as follows:

Of wheat, sixty pounds;
Of buckwheat, fifty pounds;
Of oats, thirty-two pounds;
Of beans, sixty pounds.
Of potatoes, sixty pounds;
Of clover seed, sixty pounds.
Of hemp seed, forty-four pounds.
Of blue grass seed, fourteen pounds;

Of castor beans, forty-six pounds;
Of dried peaches, thirty-three pounds;
Of dried apples, twenty-five pounds;
Of onions, forty-eight pounds;
Of salt, fifty pounds;
Of mineral coal, mined without and sold within the state, eighty pounds;
Of coal mined within the state, eighty pounds;
Of timothy seed, forty-five pounds;
Of rye, fifty-six pounds;
Of barley, forty-eight pounds;
Of corn meal, fifty pounds;
Of cranberries, thirty-three pounds;
Of millet seed, fifty pounds;
Of orchard grass seed, fourteen pounds;
Of malt rye, thirty-five pounds;
Of middlings, fine, forty pounds;
Of middlings, coarse, thirty pounds;
Of osage orange, thirty-three pounds;
Of parsnips, fifty-five pounds;
Of sweet potatoes, fifty-five pounds;
Of turnips, fifty-five pounds;
Of pop-corn, seventy pounds;
Of shelled corn, fifty-six pounds;
Of corn in the ear, seventy pounds, until the first of December next after it is grown, and after that date, sixty-eight pounds. [10520.]

574. **Violation of act, penalty:** Whoever, when buying or selling by weight, buys or sells any of the foregoing articles or commodities enumerated in section one of this act, at a measure differing in weight from the standard of measures therein prescribed and fixed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty-five dollars nor less than one dollar. [10521.]

575. **Standard bushel to be a legal-tender:** All the different kinds of grain, seeds and articles specified in this act shall hereafter be given and taken at the several weights affixed to each as a standard bushel, and as such shall be considered a legal-tender to fulfill any contract made for the delivery of either of the kinds of grain, seeds or articles specified in this act. [10522.]

576. **Wheat, how measured:** That it shall be unlawful for any person, commission merchant, miller, dealer, grain inspector, corporation, company, firm or association, either by himself, itself, officer, agent or employe, when purchasing wheat or receiving it in barter or exchange for flour or otherwise, from the owner, his agent or employe, to use for the purpose of testing or determining the weight, grade, milling or market

value of wheat any measure other than the standard half-bushel measure furnished this state by the United States; and the use of any fractional part of said standard half-bushel measure for such purpose will be a violation of this section. [10543.]

577. **Manner of measuring:** It shall be unlawful to use anything other than a straight stick with the edges square for leveling the wheat in said half-bushel measure, for the purpose of testing the weight, grade, milling or market value of wheat: *Provided*, That the provisions of this act shall not apply to wheat or grain that is inspected or graded by the car load under the regulations of any board of trade. [10524.]

578. **Violation; penalty:** Any person violating the provisions of this act (two preceding sections) shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not more than one hundred dollars nor less than ten dollars, to which can be added imprisonment in the county jail for a period not exceeding six months, in the discretion of the judge or jury trying the same. [10525.]

NOTE: — There are other provisions of law prescribing penalties practically the same as those above designated for fraud in weights and measures.

CHAPTER 28.

Wills.

I. Who may make wills.
II. Revocation of wills.
III. Effect of wills.
IV. Manner of execution.
V. Contest of wills.
VI. Lost wills.

I. Who May Make a Will.

579. **Why may make a will:** All persons (including married women), except infants and persons of unsound mind, may devise, by last will and testament, any interest, descendible to their heirs, which they may have in any lands, tenements, and hereditaments, or in any personal property, to any person or corporation capable of holding the same. [3112.]

II. Revocation of Wills.

580. **Revocation and republication:** No will in writing, nor any part thereof, except as in this act provided, shall be revoked, unless the testator, or some other person in his presence and by his direction, with intent to revoke, shall destroy or mutilate the same; or such testator shall execute other writing for that purpose, signed, subscribed and attested as required in the preceding section. And, if, after the making of any will, the testator shall execute a second, a revocation of the second shall not revive the first will, unless it shall appear by the terms of such revocation to have been his intent to revive it, or, unless after such revocation he shall duly republish the previous will. [3115.]

581. **When birth of child revokes:** If, after the making of a will, the testator shall have born to him legitimate issue, who shall survive him, or shall have posthumous issue, then such will shall be deemed revoked, unless provision shall have been made in such will for such issue. [3116.]

582. **Death of such child:** But in case such child dies without issue, and the wife of such testator be living, the estate of the testator, except the wife's interest therein, shall descend according to the terms of the will; and in case of the death of the wife, and also of the child, without issue, the whole of such estate shall descend as directed in the will, unless such child have a wife living at his death, in which case

such wife shall hold such estate to her use so long as she remains unmarried. [3117.]

583. **Marriage of testatrix revokes:** After the making of a will by an unmarried woman, if she shall marry, such will shall be deemed revoked by such marriage. [3118.]

584. **Effect of contract for conveyance:** When any testator, after making his will, shall execute a contract for the conveyance of any property devised in such will, and any part of the purchase-money remains unpaid, such conveyance shall not be deemed a revocation, unless it shall appear from such contract to have been so intended; and a remedy for specific performance may be had against the devisees by the persons entitled thereto, by virtue of the contract; and the purchase-money due on such contract, when recovered by the executor, shall be paid to the devisees. [3119]

585. **Incumbrance not a revocation:** An incumbrance upon any estate shall not be deemed a revocation of any devise of such estate previously executed, but the devises and legacies relating thereto shall be subject to such incumbrance. [3120]

586. **New estate in devised property:** If, after having executed a will devising any property, any testator shall make a conveyance of his interest therein, and shall take back a new estate therein, such new estate shall pass, by his will, to the person to whom the original estate or interest was devised, unless it shall appear from such will, or by the conveyance of his estate or interest therein, or by the instrument by the force of which such new estate is taken back, that the testator intended that such conveyance should operate as a revocation of such devise. [3121]

587. **Partial divesting of title:** A conveyance, settlement, deed, or other act of a testator, by which his estate or interest in property previously devised by him shall be altered but not wholly divested, shall not be deemed a revocation of such devise, but the same shall pass to the devisee or legatee the actual estate or interest of the testator which would otherwise descend to his heirs, unless such devise shall be otherwise revoked, or unless, in the instrument by which such alteration is made, the intention is declared that it shall operate as a revocation of such previous devise; but if, in any case, the provisions of the instrument by which such alteration is made are wholly inconsistent with the terms and nature of such previous devise, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed or such contingency do not happen. [3122]

III. Effect of Will.

588. **Construction, and effect:** Every devise, in terms denoting the testator's intention to devise his entire interest in all his real or per-

sonal property, shall be construed to pass all of the estate in such property, including estates for the life of another, which he was entitled to devise at his death. A devise or bequest to a wife, with a condition in restraint of marriage, shall stand, but the condition shall be void. [3123]

589. **Contribution between devisees:** When any estate, real or personal, that is devised, shall be taken, in whole or in part, from the devisee for the payment of the debts of the testator, all the other devisees shall contribute their respective portions of the loss to the person from whom the estate is taken, so as to make the loss fall equally on such devisees according to the estimated value of the property received by each of them, unless the testator, in his will, in making a specific device, shall have virtually exempted any devisee from his liability for the payment of the debts with the others, or shall have, by any provision in his will, required any appropriation of his estate, or any part of it, for the payment of his debts, different from that prescribed in this section, in which case the estate shall be applied in conformity with the provisions of the will. [3124]

590. **Marshaling assets to pay debts:** Whenever any part of the real estate of a testator is left undevised by his will, and his personal estate shall be insufficient for the payment of his debts, the undevised real estate shall be first chargeable with debts, in exoneration, as far as it will go, of the real estate that is devised, unless it shall appear from the will that a different disposition of the assets for the payment of his debts was made by the testator, when they shall, for that purpose, be disposed of in conformity with the provisions of the will. [3125]

591. **Liability for debts:** Nothing herein contained shall, in any way, affect the liability of the estate of the testator for the payment of his debts. [3126]

592. **When devise shall not lapse:** Whenever any estate, real or personal, shall be devised to any descendant of the testator, and such devisee shall die during the lifetime of the testator, leaving a descendant who shall survive such testator, such devise shall not lapse, but the property so devised shall vest in the surviving descendant of the devisee, as if such devisee had survived the testator, and died intestate. [3127]

593. **Executor's indebtedness not discharged:** The naming of any executor in a will shall not operate as a discharge of any just claim which the testator had against such executor, but the same shall be settled according to law. [3128]

594. **Mortgages, how paid:** Whenever any person shall have devised his estate, or any part thereof, and any of his real estate subject to a mortgage, executed by such testator, shall descend to an heir or pass to a devisee, and no specific direction is given in the will for the payment of such mortgage, the same shall be discharged as follows:

First. If such testator shall have charged any particular part of his

estate, real or personal, with the payment of his debts, such mortgage shall be considered a part of such debts.

Second. If the will contain no direction as to what part of his estate shall be taken for the payment of his debts, and any part of his personal estate shall be unbequeathed or undisposed of by his will, such mortgage shall be included among his debts, to be discharged out of such estate unbequeathed or undisposed of. [3129]

595. **Discharge of demand, how construed:** The discharge of any demand of the testator against any person shall be construed only as a specific bequest of such demand, and the amount thereof shall be included in the inventory of the effects of the deceased and, if necessary, be applied to the payment of his debts, and, if not necessary for that purpose, shall be paid in the same manner as other specific legacies. [3130]

596. **When title from heirs not impaired by will:** The title of any lands or interest therein, purchased in good faith and for a valuable consideration from the heirs-at-law of any person who shall have died seized of real estate, shall not be impaired by virtue of any devise made by such person of the real estate so purchased, unless the will or codicil containing such devise shall have been fully proved, and recorded in the office of the clerk of the court having jurisdiction, within three years after the death of the testator, except —

First. Where the devisee shall have been within the age of twenty-one years, of unsound mind, imprisoned, or out of the state at the death of such testator.

Second. Where it shall appear that the existence of such will or codicil shall have been concealed from or unknown to such devisee.

In which cases, the limitation specified in this section shall not commence until after the expiration of one year from the time such disability shall have been removed or such will or codicil shall have come into the control of such devisee or his representative, or have been deposited in the clerk's office of the circuit court. [3131]

IV. Manner of Execution.

597. **How executed; witnesses:** No will except a nuncupative will shall affect any estate, unless it be in writing, signed by the testator, or by some one in his presence with his consent, and attested and subscribed in his presence by two or more competent witnesses; and if the witnesses are competent at the time of attesting, their subsequent incompetency shall not prevent the probate thereof. [3132]

598. **Nuncupative will:** No nuncupative will shall be valid when more than the value of one hundred dollars is bequeathed, nor unless it be made in the last sickness of the testator, and the subject thereof be reduced to writing within fifteen days after it shall have been declared

and proved by two competent witnesses who shall have heard the testator, in effect, request some of those present to bear witness thereto; and no such nuncupative will shall be proved after six months from the death of the testator, nor until his widow and heirs shall have reasonable notice of the time and place of proving the same. [3133]

599. **Soldiers' and mariners' noncupative will:** Nothing contained in this chapter shall prevent any soldier, in actual military service, nor any mariner, at sea, from disposing of his personal estate, in his actual possession, and his wages, by a nuncupative will. [3134]

VI. Contest of Wills.

600. **Complaint to contest:** Any person may contest the validity of any will, or resist the probate thereof, at any time within three years after the same has been offered for probate, by filing in the circuit court of the county where the testator died, or where any part of his estate is, his allegation, in writing, verified by his affidavit, setting forth the unsoundness of mind of the testator, the undue execution of the will, that the same was executed under duress or was obtained by fraud, or any other valid objection to its validity or the probate thereof; and the executor and all other persons beneficially interested therein shall be made defendants thereto. [3154]

VII. Lost Wills.

601. **Record of decree establishing; effect:** Whenever any will shall have been lost or destroyed, and the same shall have been established according to law, the decree of the court establishing such will shall be recorded in the proper book thereof, by the clerk of the proper court in which such will might have been proved if not lost or destroyed; and letters testamentary or of administration with the will annexed shall be issued thereon, in the same manner as upon wills duly proved before such court or the clerk thereof, and letters of administration previously granted upon the same estate shall be revoked; but the court before which proceedings were had to contest the validity, due execution, or to prove such will, or to establish a lost or destroyed will, shall have authority to restrain the executor or administrator in the meantime acting from any proceedings which it may judge injurious to the heirs or devisees of the deceased. [3165.]

602. **Secreting a will; penalty:** For penalty see Sec. 495 in Chapter on Offenses.

CHAPTER 29.

Business Forms.

I. Agreements — Contracts.
II. Affidavit.
III. Assignment.
IV. Bill of sale.
V. Bonds.
VI. Bank Checks.
VII. Drafts.
VIII. Deeds, Mortgages and Leases.
IX. Guaranty.
X. Indorsements.
XI. Orders.
XII. Promissory Notes.
XIII. Receipts.
XIV. Wills.

I. AGREEMENTS.

General Form of Agreement for Ordinary Purposes.

Articles of agreement made and entered into this.....day of .....in the year 190.., by and between A B, party of the first part, and C D, party of the second part, witnesseth:

The said party of the first part doth hereby covenant and agree with the said party of the second part to do and perform the matters and things following, to-wit: (*Here state what the party of the first part is to do and perform*).

And the said party of the second part doth hereby covenant and agree with the said party of the first part in consideration of the agreement and stipulations above made and to be performed, that he will, upon the performance of said agreement by said party of the first part, (*Here state what the second party is to do or pay, and if to pay, state when and in what manner and amounts*).

In witness whereof, the said parties have hereunto set their hands the day and the year first above written.

A. B.
C. D.

Agreement for Employing Farm Laborer.

This agreement made and entered into this.....day of .....in the year 190.., by and between A B and C D, witnesseth:

The said A B hereby agrees to work faithfully for the said C D as a general laborer on the farm of said C D and to perform other

labors in connection therewith for the period of.....consecutive months, beginning on the.....day of....., 190.., for the sum of dollars ($——.)

In consideration of said services to be performed, by said A B, the said C D hereby binds himself to pay the said A B the sum of .....dollars ($——.) in monthly installments of..... dollars ($——) each, at the end of each month of services performed under this agreement.

In witness whereof, the parties have hereunto set their hands the day and date first above written.

Witnesses:

A. B.
C. D.

Another Form for Same.

This agreement made and entered into this.....day of..... 190.., by and between A B of....., party of the first part, and C D of....., party of the second part, witnesseth:

The said party of the first part has this day agreed to enter into the service of said party of the second part, in the capacity of a general farm laborer, for a period of.....months beginning on the..... day of....., 190.., for the sum of.....dollars ($....) and other considerations as the same are payable and set forth herein below.

The said party of the second part hereby agrees to take said party of the first part into service in said capacity and pay him therefor, the said sum of.....dollars ($....) in monthly installments of .....dollars ($....) at the end of each and every month of service performed until said term of service is completed. And the said party of the second part agrees, as further consideration for said service to be performed, to give the said party of the first part, boarding, lodging, washing, mending and all ordinary home conveniences (protracted sickness and expenses thereof excepted) at the dwelling house of said party of the second part, throughout said term of service.

It is hereby mutually agreed by and between said parties that twenty-six days' service shall constitute one month, and that said party of the first part shall be allowed for all time, present, (excepting Sundays) from the beginning of said term, excepting such days, if any, when he shall not work on account of ill health, etc. It is further and finally agreed by and between said parties, that either of said parties may terminate this agreement upon.....days' notice to the other and performance of the terms hereof until the expiration of said notice.

In witness whereof, the parties have hereunto set their hands on the day and date above written.

A. B.
C. D.

Agreement for Work and Labor of Any Kind.

This agreement made and entered into this.....day of..... in the year 190.., by and between A B of....., party of the first part, and C D of....., party of the second part, witnesseth:

The said party of the first part doth hereby covenant and agree with the said party of the second part to work and labor faithfully for the said party of the second part for the term of.....months, commencing on the.....day of....., in the year 190.., in business of....., and perform such other services and labor as the said party of the second part may reasonably require.

The said party of the second part hereby agrees to pay the said party of the first part for said term of service at the rate of..... dollars ($....) per month, in the following manner:

(*Here state times and conditions of payment.*)

It is hereby agreed further between said parties that either of them may put an end to this agreement and cease the relation of employer and employee, by giving the other.....days' notice, verbal or otherwise of such intention; but in such case the said party of the second part shall pay the said party of the first part for the time he may have worked at the rate above fixed.

In witness whereof, the said parties have hereunto set their hands the day and year above written.

A. B.
C. D.

Agreement with Farm-house Tenant and Laborer.

This agreement, witnesseth: That John Temple has this day become the house-tenant of James Squires by moving into the South house on said Squires' farm, for the use and rental of which house said Temple agrees to pay the sum of four dollars per month, all of which rental said Squires agrees to accept in the labor of said Temple, at the rate of One and one-half Dollars ($1.50) for each day's service rendered, and the said Temple agrees to give the said Squires first refusal of his service during harvesting season. And this agreement shall remain in effect until either of said parties shall terminate the same by giving the other sixty days' notice of such intention.

In witness whereof, the said parties have set their hands hereunto, on the 1st day of April, 1910.

James Squires.
John Temple.

Cultivation of Field for Share of Crop.

This agreement made and entered into, this.....day of..... 190.., by and between A B of....., party of the first part, and C D of....., party of the second part, witnesseth:

Said party of the first part has this day let unto said party of the second part, a certain twenty acre field to be planted and cultivated in corn this season, the rental rendered therefor to be the.....part of the crop raised on said field.

Said party of the second part agrees to furnish the seed and plant said field in corn, and cultivate the same in a good and proper manner, and to deliver and put in the cribs of said party of the first, part, the .....part of the crop raised on said field as rental therefor. One-half of the stocks are to be allowed to remain standing for the use and benefit of said party of the first part, and the said party of the second part may cut and remove the other half thereof for his own use and benefit, but shall not pasture the same in the ground. And said party of the second part agrees to put forth all reasonable efforts to have all of said corn husked and cribbed and his fodder removed on or before December 15, next ensuing.

In witness whereof, said parties have hereunto set their hands on the day and year first above written.

A. B.

C. D.

Contract for the Sale of Live Stock, Grain, Etc.

This agreement made this.....day of..... in the year 190.., by and between A B, of.....and C D, of.....witnesseth:

The said A B, for the consideration hereinafter mentioned, hereby sells and agrees to deliver on or about the.....day of .....next, to the said C D, at..... the following: (*Here describe the stock, or grain as the case may be, stating number of head, etc., or bushels and quality, etc.*)

In consideration for the above (*say grain or stock*) the said C D hereby agrees to pay to the said A B for the same, on delivery, at the rate of (*Here state number of dollars, price per hundred weight, or price per bushel, as the case may be.*)

In witness whereof, the parties have hereunto set their hands and seal the day and year above written.

A. B.

C. D.

Agreement for Building and Maintaining Line Fence.

RISING SUN, INDIANA, March 30th, 1910.

We, John Milford and George Swisher, being owners of adjoining lands in Clinton township, Dearborn county, Indiana, hereby agree, for the improvement of our respective properties, to remove the line fence which has heretofore existed between our said lands, and instead thereof, erect a fence of wires and iron posts. Said Milford agrees to erect and maintain the east half end of said fence, and said Swisher agrees to erect and maintain the west half end of said fence, the said fence to consist of seven strands of No. 8 wire, and posts five feet above the ground and twenty feet apart with stay-slats midway between the posts, and a light guard-board painted white to be hung to the top wire the whole length of said fence. The erection of said fence to be completed on or before May 1st, 1910.

JOHN MILFORD.
GEORGE SWISHER.

Agreement for the Opening and Maintenance of a Private Road.

Agreement made and entered into this first day of February, 1910, by and between A B, of....., party of the first part, and C D, of....., party of the second part, witnesseth:

Whereas, said parties are owners of adjoining lands between and along the common boundary line of which land both of said parties desire to make a road for use and convenience of themselves and their tenants in going in and out to the turnpike, therefore, said parties mutually agree as follows, to-wit:

That each of said parties will contribute for the opening of such road, a strip of land along said boundary line, ten (10) feet wide for a distance of one hundred and twenty (120) rods back from said .....turnpike, and that each of said parties will erect and maintain at his own expense, a good and sufficient fence along his own side of said road, made by the joining of said strips of land, and that said road shall remain for the joint use of both of said parties and their tenants until such time as said parties may mutually agree in writing to its discontinuance; that said road shall be opened and fenced in the month of April, 1910.

In witness whereof, said parties have hereunto set their hands on the day and year first above written.

A. B.
C. D.

Agreement for Joint Tile Underdrain.

Agreement made and entered into this 25th day of March, 1910, by and between H. L. Martin of Farmersville, Indiana, and John Keenan of the same place, witnesseth:

Whereas, the said H. L. Martin is desirous of draining a portion of his land by carrying the water to the Meridian Road ditch through a tile underdrain across the land of the said John Keenan, and whereas, the said John Keenan will also be benefitted by such underdrain, therefore, said parties agree as follows, to-wit:

That said Martin may put in a tile underdrain across the land of said Keenan, said Martin to do all opening and filling of the ditch and furnish one-half of the tile used in crossing said Keenan's land, and said Keenan to furnish the other one-half of the tile used in crossing his own land. Said parties mutually agree that the tile used in said underdrain shall be hard-burned and six inches in diameter, and that each of said parties will have his portion of said tile on the ground ready for use by March 1st, 1910, and that the said Martin shall begin work on said underdrain on that date or as soon thereafter as the frost shall have left the ground, and shall prosecute the work without unnecessary delay until the said underdrain is completed.

If at any time in the future said parties shall mutually agree to discontinue said drain and said tile shall be taken up, then each party shall have one-half of the tile, providing he shall take them up at his own expense, but said underdrain shall not be interfered with nor taken up without the consent of both parties. All repairs of said drain shall be made by said Martin at his own expense, and said Martin shall have the right to enter upon the lands of said Keenan for the purpose of making repairs to said drain when the same are needed, or to take up his share of the said tile in case of abandonment of said underdrain.

H. L. Martin,
John Keenan.

Agreement for Private Crossing on Land of Another.

Decatur, Indiana, May 1st, 1910.

In consideration of the sum of ten dollars ($10.00) to me paid, the receipt of which sum I hereby acknowledge, I hereby give and grant to Wm. Wilkinson the right to cross my land on a direct line west from his present wagon gate to the river turnpike for the period of one year from this date, the width of said way not to exceed twenty (20) feet, and the said Wm. Wilkinson to erect and maintain a gate at the said turnpike; and I further give and grant unto the said Wm. Wilkinson the right to use said way while I am the owner of said land, so long

as he shall on the first day of each January hereafter make me a payment of ten dollars in advance.

In witness whereof, I have hereunto set my hand on the day and year first above written.

JOHN CARTWRIGHT.

Agreement for Sale of Standing Timber.

This agreement made and entered into this.....day of ..... 19.., by and between A B, of..... Indiana, as vendor, and C D of.....said state as purchaser, Witnesseth:

The said vendor in consideration of the sum of..... dollars ($.....), to be paid to him by the said purchaser, and of the agreement hereinafter contained, on the part of the said purchaser, does hereby sell unto the said purchaser all the timber and other trees standing, growing, and being on a certain tract of land situate in the township of.....county of.....state of..... .....and bounded and described as follows, to-wit:

(*Here give the description of the land by metes and bounds, if the same has been surveyed separately; if not surveyed, then describe it as so many acres located on a certain portion of the farm or tract, giving such distances, marks, etc., etc., as may be desirable to make the description reasonably certain and satisfactory to both parties*), and said vendor hereby assures and grants to said purchaser, free and full license and authority to enter upon said land with his servants and teams, and cut and work up said timber in such manner as he may desire, and to remove the same at such time as said purchaser may desire, provided, that all of said timber shall be cut and removed on or before the .....day of.....19..

The said purchaser hereby agrees to pay the said sum of..... .....dollars ($.....) for said timber, ... dollars ($.....) of which said purchaser has this day paid. The remainder, of.....dollars ($.....), it is mutually agreed shall be paid as follows:

(*Here state the conditions of further payment.*)

Said purchaser further agrees not to commit waste or damage on other lands, or to the fences of said vendor, and should such occur, said purchaser agrees to compensate said vendor therefor, at the time of the payment period next after such damage is incurred.

In witness whereof, the said parties have hereunto set their hands on the day and date first above written.

A. B.
C. D.

Contract for Sale of Land.

This contract, made this.....day of.....in the year one thousand nine hundred and..... between (*Write name of vendor or seller here*) part.. of the first part, and (*Write name of vendee or purchaser here*) part.. of the second part.

Witnesseth, that the said part.. of the first part, in consideration of the sum of.....Dollars, to be to.....duly paid as hereinafter specified, hereby agree.. to sell and convey to the said part.. of the second part, all the following described land, situated in the Township of.....County of.....State of.....to-wit: (*Here give a correct description of the land sold and to be conveyed.*) for the said sum of.....Dollars, which the said part.. of the second part hereby agree..to pay to the said part.. of the first part, as follows: (*Here state how payments to be made,*) *and if mortgage is to be taken by the seller to secure any part of the purchase price, so state, giving amount, etc., or, if there is a mortgage now on said land which the purchaser will assume and pay as a part of this purchase price, so state, etc.*

Said part.. of the second part also agree..to pay in due season all taxes and assessments, extraordinary as well as ordinary, that shall be taxed or assessed on said land, including the taxes thereon for the year 19.....

It is agreed by the parties hereto, that the said part.. of the first part, will, upon payment to him of said purchase price in the manner above stipulated, execute and deliver to the said part.. of the second part, a general warranty deed for said above described land, free and clear of and from all liens and incumbrances, excepting such as part of the second has herein agreed to pay.

It is also agreed by the parties hereto, that said part.. of the second part shall have possession of said land, and the dwelling house and all buildings thereon, on the .....day of.....191....

And it is agreed, that the stipulations herein contained are to apply to and bind the heirs, executors, administrators and assigns of the respective parties hereto.

In witness whereof, the parties hereto have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered
in presence of

_____ _____[SEAL.]
_____ _____[SEAL.]
_____ _____[SEAL.]
_____[SEAL.]

NOTE: Clauses providing for any or all of the following matters may be inserted.

1. That the seller shall furnish an abstract of the title to purchaser for examination ten days before the date set for the deal to be finally closed and deed passed.

2. That the purchaser shall not remove any buildings or cut any timber until the mortgage to secure the unpaid part of the purchase price has been discharged.

3. That the first payment in the contract of purchase shall be forfeited if the purchaser does not fulfil his contract by making the remaining payments.

4. In cases where the purchaser is to take possession under the contract before he is to have a deed, and when he shall thereafter fail to make payment for the land according to agreement, the following or similar language may be used, to wit

"It is also agreed by the parties hereto, that if the said part.. of the second part shall fail to perform this contract, or any part of the same, the said part.. of the the first part shall, immediately after such failure, have the right to declare this contract void, and to retain whatever may have been paid hereon and all improvements that may have been made on said land, as stipulated damages for nonperformance of this contract, and may consider and treat said part.. of the second part as ..... tenant.. holding over without permission and may take immediate possession of said land, and remove said part.. of the second part therefrom.

5. Any clause covering any and all features and conditions of the case is proper for insertion in the contract.

Option for Purchase of Land.

This contract, made this.....day of.....A. D. 19....., by and between.....part.. of the first part, and.....part.. of the second part.

Witnesseth, that the said part.. of the first part, in consideration of the sum of.....Dollars to.....in hand paid by said part.. of the second part, do...hereby agree that....shall and will at any time within..... .....from the date hereof, at the written request of the said part.. of the second part, execute and deliver to....., or to any person or persons as.....the said part.. of the second part shall direct in writing, a good and sufficient Warranty Deed of the following described land, situated in the.....County of..... State of Indiana, to-wit: (*Here describe land.*) for the sum of..... .....dollars, payable as follows: (*Here state manner of payment.*)

And the said part.. of the first part do... hereby further agree that .....shall not and within.....from the date hereof, sell, convey, mortgage, or otherwise encumber the said land or any part hereof, or do, or permit to be done, any act or deed to diminish or encumber the title to said land.

It is agreed by and between the parties hereto, that if the said part.. of the second part at the expiration of the aforesaid limited time shall have declined or omitted to make application for the purchase of said land at the price aforesaid, then this instrument shall be void, and the

above sum of.....Dollars so paid as aforesaid..... shall be forfeited by the said part.. of the second part, and the said part.. of the first part shall have the right to retain the same, as and for liquidated damages, and the said part.. of the second part shall relinquish to said part.. of the first part all claim to the said land, either in law or equity, and, also all claim to the said sum of.....Dollars, so paid as aforesaid, and no claim of the said part.. of the second part under this contract shall then be effectual.

In witness whereof, the said part.....ha...hereunto set .....hand and seal the day and year first above written.

Executed in the presence of

_____ _____[SEAL.]

_____ _____[SEAL.]

Agreement for Exchange or Trade of Farms or Lands.

Agreement made this.....day of....., 190.., by and between....., of.....,party of the first part, and.....of.....party of the second part; witnesseth:

Whereas the said party of the first part is the owner in fee simple of a certain parcel of land with the buildings thereon, situate in the ..... of....., State of Indiana and bounded and described as follows, to-wit:

(*Here describe premises.*)

And whereas the said party of the second part is the owner in fee simple of certain parcels of land situate in the.....of .....State of....., and bounded and described as follows, to-wit:

(*Here describe premises.*)

And whereas the said parties have agreed to make an exchange by way of mutual sale and conveyance of their said respective properties, now it is agreed as follows, to-wit:

That the said party of the first part shall, in consideration of the property hereby agreed to be conveyed by the said party of the second part to the said party of the first part, and of the sum of money to be paid by the said party of the second part to the said party of the first part as hereinafter mentioned, sell and convey to the said party of the second part, the said described land of the said party of the first part, with the buildings thereon, and the appurtenances thereunto belonging, in fee simple, and free from all incumbrances.

That the said party of the second part shall, in consideration of the property hereby agreed to be conveyed by the said party of the first part to the party of the second part, sell and convey to the said party of the first part the said described land of the said party of the second part, with the appurtenances hereunto belonging, in fee simple and possession, free from all dower and incumbrances, and shall pay to the said party of the first part the sum of money hereinafter mentioned.

The said premises belonging to the said party of the first part being considered to be of greater value than the said premises belonging to said party of the second part, by the sum of.....dollars, the said party of the second part shall, upon the execution of said conveyance, pay to the said party of the first part the sum of..... dollars ($....), the difference in value of the said premises.

The said exchange shall be completed on the.....day of .....190.., at the office of....., at .....when each of said parties shall, by good and proper deed of general warranty, convey the said premises belonging to him unto the other of them, free from all incumbrances.

Each of said parties shall be entitled to the possession and to the receipt of the rents and profits of the premises hereby agreed to be conveyed to him from and after the.....day of....., 190.., aforesaid.

If, from any cause whatever, the said prospective conveyances shall not be completed on or before the said.....day of..... next, interest at the rate of.....per cent. per annum upon the sum to be paid for equality of value, as aforesaid, shall be paid by the said party of the second part from the said.....day of ..... next, until the completion of said conveyances.

In witness whereof, the said parties have hereunto set their hands, the day and year above written.

_____[L. S.]
_____[L. S.]

Contract for Building House or Barn, Etc.

This agreement made and entered into this first day of May in the year 1910, by and between A B, of Critchfield, Indiana, party of the first part, and C D, of said village, party of the second part, with reference to the construction of a certain (*dwelling house or barn, as the case may be*) for said party of the second part witnesseth:

First. That the plans and specifications hereto annexed, and marked "A," and every part and clause thereof, are made a part of this agreement.

Second. That the said A B, hereby agrees that he will, on or before the first day of October, 1910, do, perform, finish and complete, in the

manner therein stated all work set forth and referred to in said specifications; the work to be commenced, no obstacles not under control of either party preventing, on the first day of June, 1910. (*Here state who is to furnish the materials, delivery, etc.*) And the said C D agrees to pay said A B for said work as follows:

(*Here state payments.*)

If any alterations to said building should be directed by the said C D, such work as said alterations may require, shall be estimated and the amount to be paid for the same agreed upon, and all reduced to writing, as supplemental to this agreement before said alteration is commenced.

In witness whereof, the parties have hereunto set their hands the day and date first above written.

A B,
C D.

NOTE: A drawing or plans should be made showing the dimensions of the building, of timber, foundation, elevation, etc. If a house, the thickness of the walls, the height of each story, the dimensions of the cellar, rooms, attic, floors, windows, stairways, fire-places, grates, clothes-presses, pantries, sinks, plumbing, etc., should be shown. There should be specifications of all material, workmanship, etc., etc.

II. AFFIDAVIT.

General Form for Ordinary Purposes.

State of Indiana,
..... County, ss:

A B, residing at ..... and of lawful age, being first duly sworn, says:

(*Here state the facts.*)

Further affiant saith not.

A B.

Sworn to by the said .....A B .....and by him subscribed in my presence this.....day of....., 19....

(*Official character.*)

Affidavit to Claim.

State of Indiana,
..... County, ss:

Before me, the undersigned, a ..... in and for said county, personally appeared A B who made solemn oath that there is

justly due him on the above claim an itemized statement of which as attached hereto, the sum of ..... dollars ($.....), that no payments have been made thereon, and that there are no offsets against the same to his knowledge.

(Signed) A B.

Sworn to and subscribed before me this ..... day of ..... 19....

(*Official character here.*)

Affidavit — Proof of Account. (Another Form).

State of Indiana,

..... County, ss:

(*Name of person making affidavit*) being duly sworn, deposes and says, that he is (*If agent or attorney is making affidavit, write his name here*), the within claimant and makes this affidavit for and in ..... behalf; that the annexed account is correct; that the charges therein made are just and reasonable, and that neither the whole nor any part thereof has been paid.

Subscribed and sworn to before me this ..... day of ..... A. D. 19....

Another Form of Affidavit to Debt or Account.

State of Indiana,

..... County, ss:

(*Name of person making affidavit*) being first duly sworn, deposes and says, that he is (*President, Secretary, Cashier, Bookkeeper of the company, or of the owner of the account annexed hereto*) that he has examined the account hereto annexed, and carefully compared the same with the original entries in the books of (*Name of creditor*) that said account is truly and correctly made out from said books; that the goods in said account described, were actually sold and delivered by said (*Name of creditor*) to (*Name of debtor*); that the charges therefor in said account are correct and true as therein set forth, to the best of deponent's knowledge and belief; that the claim and demand of said (*Name of creditor*) against the said (*Name of debtor*) as shown by said annexed account is just, due and unpaid; that there is no just offset, payment or credit therein in law or equity known to deponent, excepting as in said account stated, and that there is now due to the said (*Name of creditor*) from the said (*Name of debtor*) the sum of .....dollars, and interest thereon at the rate of ..... per cent. per annum, from the .....day of ..... A. D. .....

Subscribed and sworn to before me, this.....day of..... A. D. 190....

Notary Public, ... County, Indiana.
My commission expires ..... 19..

III. ASSIGNMENT.

General Form for Assignment of Written Instruments.

WARSAW, INDIANA, July 24, 1910.

In consideration of the sum of ..... dollars ($.....) to me paid by A B, I hereby assign to him all my rights, title and interest in and to the within instrument.

C D.

Assignment of an Account.

For value received, I hereby sell, assign and transfer to A B, the within (or annexed) account, and all of my right, title, interest and demand in and to the same, with full authority to collect and receipt for the same. I guarantee that the said account is just and due, and that I have not received or discharged the same or any part thereof.

Dated this 24th day of July, 1910.

C D.

Notice to Debtor by Creditor of Assignment of Debt.

WARSAW, INDIANA, July 24, 1910.

To M. N.

DEAR SIR: I hereby notify you that I have this day assigned the debt of ..... dollars ($.....) now owing from you to me to A B, and I hereby request you to pay the said sum to him, and his receipt to you for the same shall be a sufficient and full discharge from said debt.

Yours very truly,

C D.

Notice of Assignee to Debtor of Assignment of a Debt.

WARSAW, INDIANA, July 25, 1910.

To M. N.

DEAR SIR: I hereby notify you that C D did by an agreement on the 24th day of July, 1910, assign and fully transfer to me the debt of ..... dollars ($.....) owing by you to him. Therefore I request that you pay the said debt to me on or before the ..... day of ..... next, and very greatly oblige,

Yours very truly,

A B.

Assignment and Guaranty of Payment.

VERNON, INDIANA, July 24, 1910.

For value received I hereby sell, assign and transfer to A B all of my right, title and interest in, to the within account, and all money due thereon, to-wit, the sum of ..... dollars ($.....), and I hereby guarantee the payment of the same to the said A. B, or his assigns.

C D.

General Assignment of Account.

(LONG FORM.)

Know all men by these presents, that.....of the ..... of ..... in the county of ..... and State of Indiana, for and in consideration of the sum of ....Dollars, lawful money of the United States, to ..... paid by ..... of the second part, do.. by these presents sell, assign, transfer and set over, unto said part.... of the second part, ... executors, administrators or assigns, all ..h.. right, title and interest in and to the annexed account, and in and to any and all sums of money now due or hereafter to become due upon the account, in favor of said....., against ..... for the sum of ..... Dollars, a statement of which account is hereunto annexed, and.....do hereby give said second part...., ... executors, administrators and assigns, full power and authority for his, her, or their use and benefit, but at his, her or their own cost, to ask, demand, collect, receive, compound and receipt or give acquittance for the same or any part thereof, and in ..... name or otherwise, to bring, prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness whereof, ... have hereunto set .... hand .... and seal .. this.....day of.....A. D. 19....

_____ [L. S.]

_____ [L. S.]

IV. Bill of Sale.

(LONG FORM.)

Know all men by these presents, that.....of the ..... of ..... in the county of ..... and State of Indiana, of the first part, for and in consideration of the sum of.....Dollars, lawful money of the United States, to ..... paid by ..... of the second part, the receipt whereof is hereby acknowledged, ha.. bargained and sold, and by these present do.. grant and convey, unto the said part.... of

the second part, ..., executors, administrators or assigns, all the following goods and chattels, to-wit:

(*Here make a list of the goods and chattels sold.*)

belonging to..... and now in.....possession at .....

To have and to hold the same unto the said part.... of the second part, ... executors, administrators and assigns, forever. And the said part.... of the first part, for ..... heirs, executors and administrators, do.. covenant and agree to and with the said part.... of the second part, ...executors, administrators and assigns, to warrant and defend the sale hereby made of said property, goods and chattels, unto the said part.... of the second part, ... executors, administrators and assigns, against all and every person or persons whatsoever.

In witness whereof, ... have hereunto set ..... hand.. and seal.. this.....day of, ...A. D. 19....

Signed, sealed and delivered
in the presence of

_____ _____ [L. s.]
_____ _____ [L. s.]
_____ _____ [L. s.]

Bills of Sale.

(SHORT FORM.)

In consideration of .....dollars ($.....) to me in hand paid by A B, I have this day bargained and do hereby sell and convey to the said A B the following described property, to-wit:

(*Here describe the property.*)

In witness whereof, I have hereunto set my hand this ..... day of ....., 190..

C D.

Bill of Sale of Horse with Guaranty.

COLUMBUS, INDIANA, June 27, 1908.

In consideration of the sum of one hundred and twenty-five dollars ($125.00) in hand, to me paid by Arthur Francis, I have this day bargained and sold, and do hereby sell and convey to the said Arthur Francis one bay gelding six years old, named Dick, and I guarantee said gelding sound and gentle in every particular.

PERRY HAMBLETON.

V. BONDS.

General Form for All Ordinary Purposes.

Know all men by these presents, that we, ...of the ..... of.....in the County of.....and State of.....and .....of the.....of.....in the County of.....and State of.....are held and firmly bound unto.....of the .....of.....in the County of.....and State of..... in the sum of.....Dollars good and lawful money of the United States of America, to be paid to the said.....h..executors, administrators or assigns, for which payment well and truly to be made, we do bind ourselves, our heirs, executors, or administrators, jointly and severally, firmly by these presents..

Sealed with our seals; dated this.....day of..... A. D.....

Whereas, the above bounden.....

(Here state what is to be performed.)

Now, therefore, the condition of the above obligation is such, that if the above bounden.....shall well and truly indemnify and save harmless, the said.....h..executors and administrators, from and against.....then this obligation to be void, otherwise to remain in full force.

_____ _____

_____ _____

_____

_____

State of Indiana,

County of.....ss.

.....of the.....of.....in said County of..... the sure...named in and who signed the annexed and foregoing bond, being duly sworn.....deposes and says, that he is worth in unincumbered property, not exempt from execution under the laws of this State, the sum of.....Dollars, after payment of all just debts, claims and liabilities. that such property consists of.....situated and being in said County of.....

Subscribed and sworn to before me, this.....day of..... A. D. 1..

.....

.....

NOTE: In case of two sureties, always insert "each for himself" in the space after the words "being duly sworn."

Bond for Payment of Rent.

Know all men by these presents, that we, William Smith, of Lincolnville, Indiana, principal, and Charles Haines, of said village, surety, are firmly held and bound unto Joseph Raymore, of said village, in the sum of five hundred dollars, for the payment of which sum to the said James Raymore, his executors, administrators, and assigns, we hereby each jointly and severally bind ourselves, our heirs, executors and administrators.

The conditions of this obligation are such that whereas, the said Joseph Raymore has leased unto the said William Smith, certain land, and the farm buildings and dwelling house situate on Wilke's pike, one mile south of said village, by lease bearing even date herewith, and whereas said lease was granted upon the condition that the above named Charles Haines should join as surety for the said William Smith, in a bond for the due payment of the rent and the performance of the covenants and conditions contained in the said lease, now, if the said William Smith, his executors, administrators or assigns, shall, during the continuance of the said lease, duly pay to the said Joseph Raymore, his heirs or assigns, the rent upon the respective dates appointed in said lease for payment thereof, or within ten days next after such respective days, and shall, during the continuance of the said lease, duly observe and perform all and singular the covenants and conditions therein contained on the part of the said lessee, his executors, administrators and assigns, to be observed and performed; provided that the neglect or forbearance of the said lessor in enforcing payment of such rent or the performance of such covenants and conditions, or the giving of time by him for payment or performance thereof, shall not in any way release the said Charles Haines or either of them, his or their hears, executors, or administrators, in respect of his or their liability under the above written bond, then this obligation shall be void; otherwise, it shall be and remain in full force and virtue.

In witness whereof we have hereunto set our hands this 1st day of February, 1910.

Signed in the presence of:

_____ William Smith, Principal,

_____ Charles Haines, Surety.

VI. BANK CHECKS.

Payable to Order.

No. ALBANY, INDIANA,....., 190..

OHIO RIVER BANK,

Pay to.....or order,
.....Dollars $.....

Certified Check.

No. EVANSVILLE, INDIANA, January 10, 1910.

SHIPPER'S BANK.

Pay to Hugh McHugh .....or order,
One hundred .....Dollars, $100.00.

JOHN DOE.

Good for $100 when properly indorsed. Wm. Bates, Cashr.

Certificate of Deposit.

$500.00. BEDFORD, INDIANA, Dec. 24, 1910.

HOOSIER BANK.

Richard Roe has deposited in this bank, Five Hundred Dollars, payable to his own order, upon the return of this certificate properly endorsed.

JOHN DOE, Cashier.

VII. DRAFTS.

Sight Draft.

$200.00. MADISON, INDIANA, Feb. 1, 1910.

At sight pay to the order of the Collector's Bank, Two Hundred Dollars, and charge to the account of

JAMES MCPHERSON.

To Chas. C. Cruikshank,
Indianapolis, Indiana.

Time Draft.

$100.00. MADISON, INDIANA, Dec. 20, 1910.

At ten days' sight pay to the First National Bank, New Orleans, One Hundred Dollars, and charge to our account.

C. C. DOUGLAS & Co.

To Clark Simpson,
Indianapolis, Indiana.

Accepted Drafts.

$212. MARION, INDIANA, Dec. 23, 1910.

At ten days' sight pay to Smith & Co., Bankers, Two Hundred and Twenty Dollars, and charge to my account.

Stephen Alexander.

To A. A. Barkus & Co.,
Columbus, Ohio.

Dec. 24, 1908.
Accepted.
A. A. Barkus & Co.

VIII. DEEDS, MORTGAGES AND LEASES.

Warranty Deed.

This indenture witnesseth, that.....and..... his wife, of.....county, Indiana, convey and warrant to .....of.....Indiana, for and in consideration of the sum of.....dollars ($.....) the following described real estate in.....county in the state of Indiana, to-wit:

(*Here describe real estate.*)

In witness whereof, the said.....and .....have hereunto set their hands and seals this.....day of.....19..

_____[SEAL.]
_____[SEAL.]

State of Indiana,
.....County, ss:

Personally appeared before me the undersigned a..... in and for said county and state, the said.....and .....who acknowledged the execution of the foregoing deed to be their voluntary act and deed.

Witness my hand and official seal this.....day of .....19..

.....
(Official Capacity.)

Quitclaim Deed.

This indenture, witnesseth, that.....and .....his wife, of.....county, Indiana, convey and quitclaim to.....of..... County, State of.....for and in consideration of .....dollars ($.....) the following described real estate in.....County, Indiana, to-wit:

(*Here describe real estate.*)

In witness whereof, the said.....and..... have hereunto set their hands and seals this.....day of ..... 19..

_____[SEAL.]
_____[SEAL.]

State of Indiana,

.....County, ss:

Personally appeared before me the undersigned a..... in and for said county and state, this.....day of..... 19.., the said.....and.....grantors herein and severally acknowledged the execution of the foregoing deed as their voluntary act and deed.

Witness my hand and official seal this.....day of .....19..

_____[SEAL.]

(Official Capacity.)

Mortgage.

This indenture witnesseth, that..... of .....County, and State of..... Mortgage and Warrant to.....of .....County, and State of.....the following Real Estate, in.....County, in the State of Indiana, to-wit:

(*Describe Real Estate.*)

And the mortgagor expressly agrees to pay the sum of money above secured, without relief from valuation laws, and upon failure to pay any one of the notes, at maturity, or any installment of interest when due, then all of said notes and the whole of said debt, are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed, that until all of said notes are paid said mortgagor will keep all legal taxes and charges and assessments against said premises paid as the same become due, and will keep the buildings thereon insured for the benefit of the mortgagee, as his interests may appear, and failing to do so, said mortgagee may pay said taxes and assessments and keep the buildings on said property insured, and the amount so paid, with eight per cent. interest thereon, shall be a part of his debt secured by this mortgage.

In witness whereof, the mortgagor.. ha.... hereunto set hand.. and seal.. this.....day of.....19..

_____[SEAL.]

_____[SEAL.]

State of Indiana,

.....County, ss:

Personally appeared before me.....a .....in and for said county and state,..... .....who acknowledged the execution of the annexed Mortgage to be.....voluntary act and deed.

Witness my hand and.....seal this..... day of.....19...

_____[SEAL.]

(Official Capacity.)

Mortgage.

(*Short Form.*)

This indenture witnesseth, that.....
of.....County and State of.....
Mortgage and Warrant to.....of
.....County, in the State of.....for the
sum of.....dollars, the following Real
Estate, in.....County, in the State of Indiana, to-wit:

(*Describe Real Estate.*)

.....
.....
.....

and the mortgagor.. expressly agree.. to pay the sum of money above secured without relief from Valuation Laws.

In witness whereof, the mortgagor.. ha.... hereunto set hand.. and seal.. this.....day of.....19..

_____[SEAL.]
_____[SEAL.]

State of Indiana,
.....County, ss:

Personally appeared before me.....a
.....in and for said county and state,.....
.....who acknowledged the execution of the annexed Mortgage to be.....voluntary act and deed.

Witness my hand and.....seal this.....
day of.....19...

_____[SEAL.]
(Official Capacity.)

Lease.

This indenture witnesseth, that.....of the County of.....in the State of Indiana, has this day demised and leased to.....of said County and State, and to his executors, administrators and assigns, the following premises in said County and State, to-wit:

.....
.....
.....

together with the rights, privileges and appurtenances to the same belonging, to have and to hold the same for and during the term of .....from the.....day of

.....19.. And the said.....
hereby agrees to pay as rent for said premises the sum of.....
per ..... the said rent to be paid on the.....
day of.....without relief from valuation or appraisement laws.

The conditions of this lease are: That the premises are to be used and occupied by..... for a.....
and for no other purpose. That no ashes are to be kept in wooden vessels or allowed to accumulate on the premises. That the premises are not to be sub-leased by the said.....
or occupied by other persons, or for other purposes than herein expressed, or this lease assigned by the said.....
without the consent of the said.....That no nails are to be driven into the walls, and no waste committed nor damage done to the premises, and no lewd or immoral practices are to be allowed thereon.....
At the expiration of this lease, or on the failure to pay rent when the same is due, or on failure to comply with any of the conditions of this lease, the same shall terminate at once without notice, and the said .....his representatives or assigns, may enter upon and take possession of said premises and expel the occupant thereof, without in any wise being a trespasser, and the failure of the said.....
.....to take possession of the said premises at the times aforesaid shall not estop him from afterwards asserting said rights; and the occupation of said premises by the said tenant, after the expiration of said lease, or the forfeiture thereof, shall give him no rights as a tenant, but he may be expelled at any time, without notice. On failure to pay rent at maturity, or to give possession at the expiration of this lease, and as liquidated damages for such failure, it is agreed that double the rent above specified shall be paid for the time the rent remains due and unpaid, or said tenant holds possession without right, and should suit be instituted to collect rents, or obtain possession of the premises, the said.....agree to pay attorney's fees therefor.

Witness our hands, this.....day of.....
19..

_____[SEAL.]
_____[SEAL.]

State of Indiana,
.....County, ss:

Before me,.....a.....
in and for said County, this.....day of.....19..
.....
.....
.....
acknowledged the execution of the annexed lease.

Witness my hand and.....seal.

.....[SEAL.]

.....[SEAL.]

SURETY FOR PAYMENT OF RENT.

(To be written at end or on back of lease.)

In consideration of the letting of the premises in the foregoing instrument described, and for the sum of one dollar, to..... paid.....do hereby become surety for the punctual payment of the rent and performance of the covenants in said instrument mentioned, to be paid and performed by the second part.... therein named; and if any default shall at any time be made therein ..... do hereby promise and agree to pay unto the part.... of the first part named in said instrument, the said rent and arrears thereof that may be due, and fully satisfy the condition of said instrument, all damages that may occur by reason of the non-fulfillment thereof, without requiring notice or proof of the demand being made.

Witness our hand..and seal.. this....day of .....day of....., 19..

.....[L. S.]

.....[L. S.]

Lease of Farm with Lien on Crops.

This instrument, made this.....day of ..... A. D. ..... by and between *(Name of lessor or owner of farm)* of the first part, and *(Name of lessee or renter of farm)* of the second part.

Witnesseth, that the said part.. of the first part, for and in consideration of the rents and covenants herein specified, do— hereby let and lease to said part— of the second part the following described piece— or parcel—of land situate and being in the..... of ..... county of ..... and State of Indiana, to-wit: *(Here describe the farm)* for the term of ..... commencing on the .....day of .....A. D. ....., and ending on the..... day of ....., A. D. 19.. *(Here state the use to which the premises shall be put, crops to be raised, live stock to be kept; and agreement as to the manner of keeping down weeds, building fences and keeping same in repair, hauling out manure, furnishing of grass-seed and sowing of same, hay, fodder, pasture for horses, cattle and hogs, fire wood, etc., privileges and special matters are all things to be regulated by agreement and should be made a part of the lease by writing in the lease, whatever such agreement may be.)*

And for and in consideration of the aforesaid term of rent of the

said premises, the said part.... of the second part do.. hereby hire the said premises for the term of.....as above mentioned, and do.. covenant and agree to pay to the said part.... of the first part ..... heirs, executors, administrators or assigns, the sum of ....dollars, lawful money of the United States of America, to be paid as follows, to-wit: (*Here state how rent shall be payable*).

And, as a further consideration of the aforesaid term of rent of the said premises, the said part.... of the second part do.. hereby covenant and agree to pay all taxes, whether state, county, township, school or road taxes, or any other taxes that may be imposed on the whole or any part of the said premises and deliver to the said part.... of the first part ..... heirs, executors, administrators or assigns, on the last day of each year, the proper and necessary receipts for all taxes that ..he.. may have paid during such year; and at all times to keep the buildings and fences on said premises in good order and repair, and that ..he.. will not sub-let the said premises or any portion thereof, nor assign nor transfer this lease to any person whomsoever, without the written consent of the said part.... of the first part .....heirs, executors, administrators or assigns, endorsed hereon.

And for the purpose of securing the payment of the said rent above reserved and taxes, the said part.... of the second part hereby covenant.. and agree.. that the said part.... of the first part ..... heirs, executors, administrators and assigns shall have a lien in the nature and to the effect of a chattel mortgage upon all the produce of the said tillable land, whether harvested or not, and the said part....of the second part herebysell.. and mortgage.. to the said part... of the first part....heirs, executors, administrators and assigns, the said produce, and in case the said part... of the second part.. shall fail or neglect to pay the same as above covenanted and agreed upon, the said part... of the first part..... heirs, executors, administrators and assigns, shall have the right and power to take possession of the said produce, wherever it may be found, and sell the same at private sale or public auction at the best prices ..he.. can obtain therefor after giving at least ..... days' previous notice of the time and place of said sale, by posting a written or printed notice thereof in ..... or more public places in the said ..... of ....., and out of the money to arise from such sale thereof, if sufficient there shall be, to pay and retain the amount of said rent and taxes due, together with any and all costs and charges of such sale, and shall pay the surplus money (if any) to the said part.... of the second part.

The said part.... of the first part give.. the said part.... of the second part permission to cut on the wood land of said farm, the timber that may be necessary for keeping the buildings and fences in repair, but for no other purpose whatever, excepting for the firewood necessary to be consumed on the said premises ..... which must always be

cleanly cut next adjoining the said tillable land, in strips of not to exceed ..... rods in depth across the whole width of the said premises as far as the wood land shall extend, heaping and burning the brush.

And at the expiration of the said term of rent, the said part.... of the second part do.. covenant and agree to surrender and give up the said premises, together with the buildings and fences ..... in good order and repair to the said part.... of the first part ..... heirs, executors, administrators or assigns. And should the said part.. of the second part fail in any of the foregoing covenants, conditions and obligations on ..... part to be fulfilled, kept and performed, then this lease will become null and void, and the said part.... of the first part ..... heirs, executors, administrators or assigns, may peaceably re-enter and take possession of the premises and property hereby rented, without any formal proceedings either at law or in equity, and the said part.... of the second part hereby agree.. to pay to the said part.... of the first part ..... heirs, executors, administrators or assigns, all damage and loss, which ..... they or any of them may suffer, by reason of any failure on the part of the part.... of the second part to faithfully carry out, observe and perform all the terms, covenants and conditions hereinbefore set forth.

In witness whereof, the parties to this instrument have hereunto set their hands and seals the day and year first above written.

.....[L. S.]
.....[L. S.]

(Acknowledgment, etc.)

Lease to Cultivate Farm for Share of Crops.

This agreement made this first day of February in the year 1910, by and between A B, party of the first and C D, party of the second part, Witnesseth:

Said party of the first part has this day let unto said party of the second part (*Here describe the farm, as, the Smith Road Farm, or, the Mosquito Creek Farm, one hundred acre farm, etc.*) of the party of the first part, to occupy and cultivate during the year beginning March 1, 1910 and ending February 28th, 1911.

Said party of the second part agrees to cultivate said farm in a good workmanlike manner, to keep the land free from weeds, haul out the manure, and keep the fences in good repair, the party of the first part to furnish the material therefor. Further, the said party of the second part agrees to deliver at ..... for the party of the first part, the ..... of all the grain and hay of said party of the first part raised on the farm to-wit: (*Here state what share of grain, hay, etc.*)

The said parties mutually agree (*Here put in agreements as to pastur-*

age, wood privileges, etc., of both parties, if any such other privileges are given to either one or both of said parties.)

This agreement shall take effect this day and possession of said premises, together with the dwelling house and all buildings thereon, shall be given the said party of the second part on the first day of March, A. D., 1910.

In witness whereof said parties have hereunto set their hands on the day and date first above written.

A B.
C. D.

Lease from Month to Month.

(*Name of owner of premises*) hereby lets and rents to (*Name of renter*) from month to month, from the.....day of.....A. D. 19..., the following described premises, viz.:

(*Describe premises here.*)

It is agreed that the rent of said premises shall be at the rate of .....dollars per month, and payable monthly in advance at (*State here where payment to be made*), and also that the said (*Name of renter*) will at the expiration of the term, yield and deliver up said premises in as good condition, as when taken, reasonable use and wear thereof and damage by the elements excepted, and that..... will not re-lease or assign or sublet said premises, or any portion thereof, to any person without the written consent of said (*Name of owner here*) or attorney's agent.

This lease to be terminated at the option of either party at the end of any month upon giving ten days' notice of such intention.

Dated at ..... Indiana, the ..... day of ..... 19..

.....
.....

Notice to Quit Tenancy.

(Ten Days' Notice.)

To.....:

You are hereby notified to deliver up to me, at the expiration of ten days from the time of receiving this notice, the following described premises, situate in ..... County, in the State of Indiana, to-wit: (*Describe premises here*), now held by you of me, as

tenant, unless the rent due for said premises is paid within that time.....
.....

Dated, this.....day of..... A. D., 19..

_____[SEAL.]

Chattel Mortgage.

This indenture witnesseth, that.....
of .....County and State of Indiana, in consideration of the sum of .....dollars, in hand paid by ..... of .....
County and State of.....ha.... bargained and sold, and do.... hereby sell and convey to the said.....
the goods and chattels described as follows, to-wit:
.....
.....
.....
Provided always, and these presents are upon this condition, that whereas, the said..... is indebted to the said.....
.....in the sum of .....dollars, with interest thereon at.....per cent. per annum, evidenced by.....
note of even date, as follows:
.....
.....
.....
Now if the said.....shall punctually pay said sums of money with interest, when the same shall severally become due, and not encumber, dispose of, or remove said mortgaged property from said .....County, then this conveyance to be void, otherwise to be in full force. The said.....
is to retain possession of said property until said debt becomes due, or until default is made in some one of the conditions hereof, and upon such default, or in the event the said property shall come into the hands of a receiver, assignee, trustee or public officer, the said mortgagee shall be entitled and is hereby expressly authorized and empowered to immediately take possession and seize the above described goods and chattels, and sell the same at public auction, upon first giving ten days' notice in writing to the grantor, his agents or assigns, of the time and place of said sale, and to retain from the proceeds derived therefrom, the amount of money hereby secured, with interest at the rate of.....per cent. per annum, including all costs, charges and expenses incurred or sustained by the said..... in relation to said property, and to discharge any claims or liens of third persons affecting the same, rendering the surplus to the grantor or his assigns. And the mortgagor..

agree..to keep said property insured to its full value in favor of the mortgagee, and to pay all taxes thereon; and to pay said indebtedness, together with interest at said rate and reasonable attorney's fees, without relief from valuation or appraisement laws.

Dated this ..... day of.....

_____[SEAL.]
_____[SEAL.]
_____[SEAL.]

State of Indiana,

.....County, ss:

Personally appeared before me..... a ..... in and for said County and State, ... who acknowledged the execution of the annexed Mortgage to be.....voluntary act and deed.

Witness my hand and.....seal, this.....day of .....19..

_____[SEAL.]

IX. GUARANTY.

Guaranty of Payment for Goods Sold to Another

To RICHARD ROE & Co.,
Indianapolis, Indiana.

DEAR SIRS:—I hereby guarantee payment to you for all goods which you may sell to A B, to the amount of one hundred dollars ($100.00.)

Dated this 12th day of July, 1910.

Yours very truly,

C. D.

Notice of Acceptance of Guaranty

To C. D.,
City.

DEAR SIRS—We hereby notify you that we have this day accepted your guaranty on behalf of A. B., and will sell him goods in accordance with the terms of said guaranty.

Yours truly,

RICHARD ROE & Co.

Guaranty in Sale of Horse.

INDIANAPOLIS, INDIANA, July 12, 1910.

In consideration of one hundred and fifty dollars ($150.00) to me paid by A. B. for a bay mare, named Topsy, I hereby guarantee to the said A B. that the said mare is only seven years old, sound in

all respects, free from all kinds of viciousness, and quiet to work or drive.

C. D.

Guaranty of Rent, Indorsed on Lease.

In consideration of the making of the within written lease, I do hereby covenant and agree with the within named lessor, his heirs, executors, administrators, and assigns, that if default shall at any time be made by the said lessee, his executors, administrators, and assigns, in the payment of the rent or the performance of the covenants in the within lease contained, on his or their part to be paid and performed, that I will well and truly pay the said rent, or any arrears thereof, that may remain due, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said lessor or other person having his estate in said premises.

Witness my hand seal this 12th day of July, 1910.

C. D.

X. INDORSEMENT.

Indorsement, is a writing on the back of a note, check, bill, draft or other written instrument. The kinds of indorsement are, Blank, Full, Qualified, Restrictive, and Conditional. The purpose of an indorsement may be to transfer the instrument, record a payment made thereon, or to guarantee the payment thereof, or for any other purpose where the intent of the parties with reference to an instrument may be made clear by a writing upon the back of the instrument. The following forms will serve to illustrate:

Indorsement in Blank.

JEREMIAH C. ALEXANDER.

Indorsement in Full.

Pay to the order of Samuel J. Penfield.

JEREMIAH C. ALEXANDER.

Qualified, or Without Recourse.

Pay to Samuel J. Penfield, or order, without recourse on me.

JEREMIAH C. ALEXANDER.

Restrictive Indorsement.

Pay to Samuel J. Penfield only (*or, for my use*).

JEREMIAH C. ALEXANDER.

Conditional Indorsement.

Pay to Samuel J. Penfield, or order, unless notice is given by me, before maturity, not to pay.

JEREMIAH C. ALEXANDER.

Money Indorsement.

Paid on the within note, June 26th, 1910, Fifty dollars ($50.00).

JEREMIAH C. ALEXANDER.

Indorsement by Agent.

JEREMIAH C. ALEXANDER.
By J. C. SMITH, Agent.

Indorsement of Guaranty.

For value received, I hereby guarantee the payment of the within note.

JEREMIAH C. ALEXANDER.

Indorsement of Assignment or Transfer.

For value received, I hereby sell, assign and transfer all of my right, title and interest in and to the within account (*or note, as the case may be*) to Samuel J. Penfield.

JEREMIAH C. ALEXANDER.

XI. ORDERS.

For Payment of Money.

INDIANAPOLIS, INDIANA, July 15, 1910.

James Cleary, Esq.:

DEAR SIR: Please pay to the Brown Grocery Co., the sum of Twenty-six Dollars, and charge to my account.

Very truly,

J. M. BLAKE.

To Furnish Goods to Another.

ALBION, INDIANA, July 15, 1910.

People's Clothing Co.:

GENTLEMEN: Please let the bearer, John Smith, have a suit of clothes and such other articles of clothing as he may wish to purchase; the total amount not to exceed Twenty-five Dollars, and I will pay you.

Very truly,

J. M. BLAKE.

Another Form for Same Purpose

ANDERSON, INDIANA, July 15, 1910.

People's Clothing Co.:

GENTLEMEN: Please let the bearer, John Smith, have clothing to the amount of Twenty-five Dollars, and charge to my account.

Very truly,

J. M. BLAKE.

For Delivery of Fruit Trees.

ANGOLA, INDIANA, October 1, 1910.

John Kraner, Esq., Agt. Painesville Nurseries:

DEAR SIR: Please deliver the fruit trees ordered by me, to the bearer, James Masters, who will pay you the sum of Fourteen Dollars due for same.

Yours truly,

H. C. WELLS.

For Delivery of Hogs.

AUBURN, INDIANA, November 2, 1910.

Samuel Schwenker, Esq.:

DEAR SIR: Please deliver the twenty-seven head of hogs, which I purchased of you last week, to the bearer, Amos Whitman, and bring weights to me for settlement, and oblige, WILLIAM STOCKMAN.

Order for Shipment of Apples.

BEDFORD, INDIANA, October 6, 1910.

Herman Strader, Esq.:

DEAR SIR: Please ship apples which I recently purchased of you, to Merchant & Co., Cincinnati, Ohio, not later than October 15, and oblige,

Yours truly,

A. L. BOUGHTMAN.

XII. PROMISSORY NOTES.

Negotiable and Payable in Bank.

Due..... LAWRENCEBURG, IND.,.....19..

.....after date we or either of us promise to pay to the order of the People's National Bank, negotiable and payable at the People's National Bank, Lawrenceburg, Ind.,..... Dollars

With eight per cent interest per annum from maturity until paid, and Attorney's fees, value received, without any relief from Valuation or Appraisement Laws. The Drawers and Endorsers severally waive presentment for payment, notice of protest and notice of non-payment of this Note.

.....

$..... .....

Note Secured by Collateral.

$..... LAWRENCEBURG, IND., ...19..

.....after date.....promise to pay to

THE PEOPLE'S NATIONAL BANK OF LAWRENCEBURG, INDIANA,

or order, ...Dollars, for value received, negotiable and payable at The People's National Bank, Lawrenceburg, Ind., with interest after maturity at the rate of eight per cent. per annum until paid, and attorney's fees, having pledged as collateral security for the payment of this note, and of every other liability of the undersigned to said Bank, whether as maker, endorser, surety or otherwise, due or to become due, or which may hereafter be incurred, the following property, viz.:

.....

.....

.....

The market value of which is now $..... The payee shall have the right to call for additional security should the same decline; and on failure to respond, or if insurance policies satisfactory to the payee in character and amounts, payable to payee as its interest may appear, shall not be maintained in possession of payee, this obligation shall be deemed to be due and payable on demand. The payee shall have full power and authority to sell and assign and deliver the whole, or any part of said property, or any substitutes therefor, or any additions thereto, either in Lawrenceburg, Ind., or elsewhere, at public or private sale, at the option of said payee, or assigns, on the non-performance of any of the conditions of this obligation, or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice. In case of public sale the holder may purchase without being liable to account for more than the net proceeds of such sale.

.....

.....

Note Not Negotiable.

$200.00. BLOOMFIELD, IND., June 10, 1910.

One year after date I promise to pay Richard Roe, Two Hundred Dollars with interest at 5% per annum from date, and attorney's fees.

JOHN DOE.

Note Payable on Demand.

$100.00. BOONVILLE, INDIANA, Feb. 1, 1910.

On demand I promise to pay Richard Roe, or order, One Hundred Dollars, with interest at 6% per annum, and attorney's fees.

JOHN DOE.

Note with Surety.

$100.00. BROWNSTOWN, INDIANA, March 1, 1910.

Nine months after date, we, Richard Roe as principal, and John Doe as surety, promise to pay Thomas Benton, or order, One Hundred Dollars, with 7% interest per annum, and attorney's fees.

RICHARD ROE, *Principal*,
JOHN DOE, *Surety*.

Joint Note.

$100.00. CONNERSVILLE, INDIANA, April 22, 1910.

Six months after date, we promise to pay Robert Sheldon, or order, One Hundred Dollars, with interest at 6% per annum, and attorney's fee.

RICHARD MANSFIELD,
THOMAS BENTON.

Joint and Several Note.

$400.00. CORYDON, INDIANA, January 10, 1910.

One year after date, we, or either of us, promise to pay Robert Sheldon, or order, Four Hundred Dollars, with 6% interest from date, and attorney's fees.

RICHARD MANSFIELD,
THOMAS BENTON.

Chattel, or, Note Payable in Specific Articles.

$200.00. COVINGTON, INDIANA, Feb. 22, 1910.

On demand I promise to pay Richard Roe, at my farm, two Hundred Dollars in corn at the market price when demand is made.

JOHN DOE.

Note, When Maker Cannot Write.

$100.00. DANVILLE, INDIANA, September 5, 1910.

One year after date I promise to pay Russell Worthington, or order, the sum of One Hundred Dollars, with interest at 6% per annum, and attorney's fees.

Signed in the presence of:
JOSEPH LOWDEN.

his
JAMES X SMITHSON.
mark

Note for Work and Labor.

$45.00. DELPHI, INDIANA, Jan. 10, 1910.

Three months after date I promise to pay Edward Day, or order, Forty-five Dollars, with interest at 6% per annum, and attorney's fees, value received in work and labor performed by him.

RICHARD ROE.

Due Bill.

$28.00. EVANSVILLE, INDIANA, February 8, 1910.

Due Richard Roe, Twenty-eight Dollars; value received.

JOHN DOE.

Due Bill Payable in Produce.

$16.00. LIBERTY, INDIANA, Feb. 15, 1910.

Due Robert Sheldon, Sixteen Dollars, to be paid in hay or oats at my farm at market price.

RICHARD MANSFIELD,

Swindling Note.

Madison, Indiana, February 15, 1910.

Six months after date I promise to pay John Doe, or bearer, ten dollars when I sell by order two hundred and sixty-five dollars [$265.00] worth of Patent Butter Churns, for value received, at seven per centum per annum, Said ten dollars when due is payable at Indianapolis, Indiana.

SIMON GULLIBLE. Agent for John Doe.

NOTE — By cutting off the right end of the above agreement, Doe has the note of Gullible without conditions. The note will then be sold to a third party who collects it when due.

XIII. RECEIPTS.

Receipt on Account.

$14.00. MARTINSVILLE, INDIANA, February 24, 1910.

Received of Wm. Sheldon, Fourteen Dollars to be applied on account.

JNO. MANSFIELD.

Receipt in Full of Account.

$84.00. MT. VERNON, INDIANA, February 28, 1910.

Received of Wm. Sheldon Eighty four Dollars in full of account of money due for wood.

JNO. MANSFIELD.

In Full of all Demands.

$300.00. WASHVILLE, INDIANA, March 1, 1910.

Received of James Johnson, Three Hundred Dollars in full of all demands.

CLARKE WOODSON.

Receipt for Rent.

$15.00. NEW ALBANY, Feb. 15, 1910.

Received of Herman Ford, Fifteen Dollars in full payment of rent to February 1st, 1910, for residence at No. 66 Wicker street.

SIMON LEELAND.

Receipt of Payment on a Note.

(*Must be indorsed on note.*)

January 6th, 1910, received on the within note Fifty Dollars ($50.00.)

Receipt to Third Party.

$80.00. NEW CASTLE, INDIANA, June 6, 1910.

Received of Harrison Hanford by the hand of Samuel Haynor, Eighty Dollars, in full settlement of the account of said Hanford.

HUGH HUBBARDSON.

Receipts for Papers, Etc.

NEWPORT, INDIANA, March 1, 1910.

Received of Heber Tolman, two bonds of the State Traction Co., of $100 each, and one promissory note of $200, dated August 1st, 1901, and signed by Joseph Meier; said property to be redelivered to said Heber Tolman on demand. ROBERT SHERMAN.

XIV. WILL.

I, (*name of testator here*), of (*residence*), in the County of (*name of county*), and State of Indiana, being of sound mind and memory, do make, publish and declare this to be my Last Will and Testament, in manner following, viz.:

First, I will and direct that all my just debts and funeral expenses be paid in full.

Second, I give, devise and bequeath.....

Third, ...

Fourth, ...

Fifth, ...

Sixth, I hereby appoint (*name of person appointed executor or executrix*), of (*residence of such person appointed*), Executor of this my Last Will and Testament.....

Lastly, I hereby revoke all former wills by me at any time made.

In witness whereof, I have hereunto set my hand and seal this .....day of.....in the year of our Lord one thousand nine hundred and .....(19..).

_____ SEAL.

On this.....day of.....A. D. 19.. (*name of testator*), of (*residence*), in the County of.....and State of Indiana signed the foregoing instrument in our presence, and declared it to be h.. Last Will and Testament, and as witnesses thereof we do now, at h.. request, in h.. presence, and in the presence of each other, hereto subscribe our names.

_____, residing at _____

_____, residing at _____

CHAPTER 30.

Model Business Letters.

Letter of Introduction.

FT. WAYNE, INDIANA, April 1, 1910.

David Parker, Esq., Halsey P. O., Indiana:

DEAR SIR: I have the pleasure of introducing to you my friend, Mr. B. M. Harris, of this city. He intends visiting your community in a few days on business matters, and will call on you, at my suggestion. Any favors you may show him will be highly appreciated by him as well as myself.

Yours very truly,

H. E. BENJAMIN.

Another Form.

HALSEY P. O., INDIANA, April 1, 1910.

H. E. Benjamin, Esq., Ft. Wayne, Indiana:

DEAR SIR: Permit me to introduce to you Mr. B. M. Harris, a prominent farmer and stockraiser in this locality. He will visit Ft. Wayne for the transaction of some business. As he will be a stranger there I feel that you can give him information that will be valuable to him. Any courtesies you may show him will be fully appreciated by him and myself.

Yours truly,

DAVID PARKER.

Inquiry as to Responsibility.

FT. WAYNE, INDIANA, April 1, 1910.

David Parker, Esq., Halsey P. O., Indiana:

DEAR SIR: We have an order for one of our machines from John Doe, a farmer residing in your neighborhood. As he asks for credit as to part payment of the purchase price of the machine, we desire to inquire of you as to his financial responsibility, etc. We assure you that all information given us will be treated in a strictly confidential manner.

Please send us the desired information at once and greatly oblige,

Yours truly,

QUEEN MFG. CO.

Favorable Answer.

HALSEY, P. O., INDIANA, April 3, 1910.

Queen Mfg. Co., Ft. Wayne, Indiana:

GENTLEMEN: Your favor of the 1st inst. with reference to John Doe is at hand. In answer thereto I wish to say that Mr. Doe has a very high credit at home, pays his obligations promptly and has the means of meeting any debt which he may contract for a machine.

Yours truly,

DAVID PARKER.

Unfavorable Answer.

HALSEY, P. O., INDIANA, April 3, 1910.

Queen Mfg. Co., Ft. Wayne, Indiana:

GENTLEMEN: Yours of the 1st inst. regarding John Doe received. In answer I will say that Mr. Doe for some time back has been asking extensions on his obligations, and, while apparently honest, is not credited by business men who know him, with having either the means or ability to pay promptly. He is not regarded as a good risk.

Yours confidentially,

DAVID PARKER.

Letter to Insurance Company Announcing Loss by Fire.

NASHVILLE, INDIANA, May 10, 1910.

John Doe, Esq., Agent Aetna Fire Insurance Co., Indianapolis, Indiana:

DEAR SIR: The barn located on my premises which I insured in the Aetna Fire Insurance Company through you on September 10, 1909, for $800, was destroyed by fire, Sunday, May 9, 1910. The number of the policy is 167181. Please come and view the premises and adjust the matter as soon as possible, and oblige,

Yours respectfully,

RICHARD ROE.

Letter to State Board of Agriculture.

PORTLAND, INDIANA, April 18, 1910.

State Board of Agriculture:

DEAR SIR: Will you please put me on the mailing list to receive your monthly bulletins and such other matters issued by you as will be of benefit to me.

Yours truly,

JOHN FARMER.

Letter to State Representative, or Senator.

COLUMBIA CITY, INDIANA, April 15, 1910.

Hon. Simon Blank, Representative, Indianapolis, Indiana:

DEAR SIR: I have been informed that Mr. ..... member from ....., has introduced a bill to (*Here state the object of the bill.*)

Will you kindly procure a copy of the bill and forward same to me, as I wish to examine its provisions. My information leads me to believe that (*Here say it is a meritorious measure, or, is not a meritorious measure*). I would be pleased to have your opinion on the merits of the said measure.

Yours truly,

H. K. LUKENS.

Letter to Congressman.

MUNCIE, INDIANA, May 1, 1910.

Hon. Richard Roe, M. C., Washington, D. C.:

DEAR SIR: As one of your constituents I write to ask that you procure for me the last report of the Secretary of Agriculture, which I want for the discussion it contains on the diseases of cattle and swine. I wish, also, that you place me on your mailing list, and the mailing lists in such government departments as will secure me all the agricultural reports, etc., that are for distribution to the people and which will be of benefit to me in my occupation of farming. I will be under many obligations to you for the above favors.

Yours truly,

JOHN DOE.

Regarding Stock Running at Large.

TIPTON, INDIANA, June 22, 1910.

To Township Trustee: (or road supervisor.)

GENTLEMEN: About twenty head of live stock are running at large on the public highway in this vicinity, much to the annoyance of myself and others, and to the great damage of young trees planted along the roads and growing crops in adjoining fields. Please take such measures at once as will abate this great nuisance and save further destruction of property.

Yours truly,

A. B.

Regarding Breachy Stock.

LAMBERT, INDIANA, June 15, 1910.

John Doe, Esq.:

DEAR SIR: Your cattle have been in my wheat and my corn within the past week doing considerable damage in the former. As I have taken all reasonable precautions to put the fences in good repair without effect, I am obliged to ask you to use such means as will keep your cattle out of my crops. Please give this matter your immediate attention and oblige,

Yours truly,

RICHARD ROE.

Regarding Diseased Stock.

HOMER, INDIANA, May 15, 1910.

John Doe, Esq.:

DEAR SIR: I wish to caution you not to let your sheep, which are infected with both grub and foot-rot, run out on the public road again until said diseases have been cured or the sheep disposed of. I am obliged to take my sheep over the same road, and should they become infected with either of those diseases I would be compelled to look to you for damages. I want to avoid all matters of that nature and the loss which would result to both of us. Therefore I offer the above suggestion.

Yours truly,

RICHARD ROE.

Regarding Repair of Line Fence.

BRAZIL, INDIANA, April 15, 1910.

John Doe, Esq.:

DEAR SIR: As I want to put stock on my pasture as soon as the season opens I hope you will repair your part of the line fence between us, which is much out of condition and will not turn stock. I have already repaired my part and trust you will attend to yours by April 30th.

Yours truly,

RICHARD ROE.

Regarding Cleaning Joint Open Ditch.

CLOVERDALE, INDIANA, April 1, 1910.

John Doe, Esq.:

DEAR SIR: I am ready to clean out the portion of the ditch assigned to me, but it is useless to begin the work until you clean your part below me, as the upper part we will fill up at once unless the lower sections are cleaned first. Please do the work assigned to you as soon as possible and greatly oblige,

Yours truly,

RICHARD ROE.

Announcing Financial Embarrassment, and Asking Extension of Time for Payment of Obligation.

KOKOMO, INDIANA, October 1, 1910.

Harmon & Co., Chicago, Ill.:

GENTLEMEN: On account of failure of my wheat crop this season and later, the loss the thirty head fat hogs by cholera. I find myself unable to pay my debts, and among them, the one of $115.00 owing you for machinery. While extremely embarrassing to me to do so, I am compelled, because of said losses which I have sustained, to ask you and all others to whom I am indebted to wait until next season for payment. My corn crop is all that I have left and it will not more than pay my rent and carry me through to next harvest. Under these circumstances, I hope you will arrange to extend me at least ten months further time. I am willing to pay interest during extension, and will endeavor to discharge the obligation promptly at the end of the period. Hoping for a favorable response, I am

Yours truly,

RICHARD ROE.

Answer to Above.

CHICAGO, ILL., October 5, 1910.

Richard Roe, Kokomo, Indiana:

DEAR SIR: Your favor of the 1st received. In answer thereto we will say that while we were fully expecting payment of the amount you owe us, we are willing to assist you in your exceedingly unfortunate condition. As we cannot make use of over-due paper, we ask that you take up the old note with a new one covering time of extension for payment. One of our representatives will be in your locality within a few days, and will come to see you and arrange the matter with you.

Yours truly,

HARMON & CO.

Notices Regarding Note About to Fall Due.

GREENFIELD, INDIANA, June 1, 1910.

John Doe, Esq.:

DEAR SIR: Your note of $150 will become due June 15, 1910. Please pay the same promptly and oblige.

Yours truly,

RICHARD ROE.

GREENFIELD, INDIANA, June 1, 1910.

John Doe, Esq.:

DEAR SIR: Regarding your note which is now seven months past due, and which I have been holding for your accommodation, I am obliged to ask that you make payment within the next ten days. Please be ready to take up the note within that time and greatly oblige,

Yours truly,

RICHARD ROE.

Apology for Delay in Payment of Note.

GREENFIELD, INDIANA, June 3, 1910.

Richard Roe, Esq.:

DEAR SIR: I regret deeply that I have not been able to meet my obligations promptly, but the circumstances causing delay were not within my control. I am now regaining lost ground, however, and will pay your note within the time specified by you. Enclosed find my check for $50 as a partial payment. The balance will be paid promptly according to request.

Yours truly,

JOHN DOE.

Requesting Settlement of Account.

HARTFORD CITY, INDIANA, June 1, 1910.

H. B. Rowley, Esq., Millgrove, Indiana:

DEAR SIR: As we are under the necessity of meeting our obligations promptly, we are compelled to ask payment of those who owe us. Since your account is now more than two months past due, we hope to receive a remittance this week covering the same.

Yours respectfully,

HOWARD & CO.

Letter Declining to Extend Further Time to Pay Obligation.

RUSHVILLE, INDIANA, May 1, 1910.

John Dearborn, Esq., Homer, Indiana:

DEAR SIR: Your favor of June 28th, requesting further time in which to make payment of your note received. In answer thereto I am obliged to say that I can not consent to another extension. Please prepare to take up said note according to agreement made some time ago, and greatly oblige,

Yours truly,

SAMUEL HARRISON.

Requesting Payment of Rent of House.

LAFAYETTE, INDIANA, April 3, 1910.

Mr. John Doe:

DEAR SIR: The monthly rent of ten dollars for the month of March for the use of the house you are now occupying is due at the present time. Please forward that amount to me as soon as possible that we may keep the account in accordance with our agreement.

Yours truly,

RICHARD ROE.

Tenant to Landlord, Requesting Extension of Time to Pay Rent.

BLUFFTON, INDIANA, September 1, 1910.

John Doe, Esq.:

DEAR SIR: Because of very unfortunate circumstances surrounding me and of which you already have knowledge, I will not be able to pay this year's rent when the same falls due October 1st, next, but I have arrangements completed to make payment in full on or before January 1, 1911. Trusting that you will be able to afford me this accommodation, I am,

Yours truly,

RICHARD ROE.

Answer of Landlord to Foregoing Request.

BLUFFTON, INDIANA, September 1, 1910.

Richard Roe, Esq.:

DEAR SIR: Yours of September 1st, received. I am fully aware of your reasons for desiring more time for payment of rent, and I wish to assure you, without delay, that it affords me much satisfaction to grant your request, since you have always been prompt heretofore in your payments. Hoping that your plans will mature as you have laid them, I am

Yours truly,

JOHN DOE.

Refusal of Tenant to Pay Rent.

DECATUR, INDIANA, September 1, 1910.

John Doe, Esq.:

DEAR SIR: On account of your failure to repair ditches and underdrains as you agreed, when I took your farm, I suffered great loss from the spring freshets. As it was through your neglect that my loss occurred I do not feel under obligation to comply with your request for the payment of rent. You understand the situation I am in, therefore I wish to say that further demand upon me will be useless.

Yours respectfully,

RICHARD ROE.

Letter Requesting a Loan of Money.

AUBURN, INDIANA, March 15, 1910.

John Doe, Esq.:

DEAR SIR: On account of some extraordinary expenses entailed upon me by reason of turnpike assessment, etc., I am obliged to procure a loan of $100 until after harvest. If you have that amount at your disposal, I would be pleased to have it for eight months. I am willing to pay 7% interest and give you good security. An early reply will be appreciated.

Yours truly,

RICHARD ROE.

Favorable Answer.

AUBURN, INDIANA, March 16, 1910.

Richard Roe, Esq.:

DEAR SIR: Yours of yesterday received. In answer I wish to say that I have the money and will accommodate you any day you may come over.

Yours truly,

JOHN DOE.

Unfavorable Answer.

AUBURN, INDIANA, March 15, 1910.

Richard Roe, Esq.:

DEAR SIR: Yours of yesterday received. In answer thereto I wish to say that I would be pleased to accommodate you, but on account of failure in payment of money owing me I am not now in a position to spare the amount you need. I trust you will not have difficulty in procuring it elsewhere.

Yours very truly,

JOHN DOE.

Letter to Tenant Advising Certain Crops.

WABASH, INDIANA, March 1, 1910.

John Doe, Esq.:

DEAR SIR: Regarding the spring crops, I would suggest that you put all of the lower field in corn, excepting about four acres on the south side, which I think should be sowed in oats. You will remember that we discussed this matter a couple of months ago, but did not arrive at any definite conclusion as to this one field. I will not come out to the farm until May 1, therefore I am obliged to make the above suggestion by letter. Hoping that you may view this matter as I do, and wishing you success with your work, etc., I am,

Yours truly,

RICHARD ROE.

Letter to a Prospective Tenant for Farm.

HUNTINGTON, INDIANA, March 1, 1910.

Joseph Rogers, Esq., Warren, Indiana:

DEAR SIR: I am informed that you intend leaving the farm where you are now living and that you want to rent another. If my information is correct and you have not yet secured another place, I would be pleased to have you come to see me at once with reference to taking my farm of one hundred and twenty acres, one mile south of this village. If you can not come, please telephone me tomorrow evening at my expense.

Yours truly,

SAMUEL HASKINS.

Letter to Farm Hand.

GOSHEN, INDIANA, February 1, 1910.

John Doe, Esq.:

DEAR SIR: If you are not yet engaged for the season please call and see me this week or the first of next. I am willing to pay you eighteen dollars per month and board and washing for nine months, beginning March 1st, next. Please come or write, informing me whether the above terms will be satisfactory. I am ready to enter into a written agreement any day you may come.

Yours truly,

RICHARD ROE.

Application for Employment as Farm Hand.

PLYMOUTH, INDIANA, February 1, 1910.

John Doe, Esq.:

DEAR SIR: If you have not yet employed any one to work for you on your farm during the coming season I would be pleased to call and see you with reference to securing the place. I can furnish the best of recommendations, etc. Hoping to hear from you at your earliest convenience, I am

Yours truly,

JOHN DAY.

Recommending a Farm Hand.

SOUTH BEND, INDIANA, February 18, 1910.

To Whom it May Concern:

This is to state that John Doe has been working with me on my farm for the past three years. During that time he has always been industrious and willing to work. He is careful and can at all times be trusted fully. Any additional information will be given on inquiry.

Yours respectfully,

R. M. COLE.

Application for Position as Domestic.

LAPORTE, INDIANA, February 15, 1910.

Mrs. A. King:

DEAR MADAM: If you are in need of assistance in your house-work, I would be pleased to have you give me a trial. I have had five years' experience and can take full charge, including cooking, if occasion should require. I have the best of reference and am idle now only because of my former employer, Mrs. B. having moved to New York, as you well know.

Please may I hear from you at once or within a day or two at farthest, and greatly oblige,

Yours very truly,

MISS CARRIE CHRISTIE.

Requesting Reference, Etc.

KNOX, INDIANA, October 20, 1910.

Mr. John Doe, Lansing, Michigan:

DEAR SIR: I have your letter at hand requesting employment with me during the winter. I am in need of a young man this coming winter to care for the stock. As we have had no previous acquaintance I would be pleased to have you send me a letter of recommendation from your former employer and any other reference you may have.

Yours truly,

RICHARD ROE.

Letter Recommending a Gardener.

ROCHESTER, INDIANA, March 1, 1910.

To Whom it May Concern:

I have had Mr. James Blucher in charge of my gardens for the past four seasons, but having now given up said gardens, Mr. Blucher will seek employment elsewhere. In severing relations with him I wish to say on his behalf that he is an honorable man and a gentleman, and has no superiors and few equals in his occupation of chief gardener. Any one wishing to employ him, may, if more information regarding him is desired, call and see me, or write to me for further particulars.

Respectfully,

JAMES KINGSLEY.

Recommending a Farm Tenant.

LOGANSPORT, INDIANA, February 28, 1910.

To Whom it May Concern:

This is to certify that the bearer, Richard Roe, has been a tenant on my farm during the last three years. He is a man of industrious

habits and understands the management of a farm so as to make it most productive. Any additional information regarding Mr. Roe will be given on inquiry. Yours respectfully,

JOHN DOE.

Inquiry for a Reliable Commission Merchant.

CRAWFORDSVILLE, INDIANA, May 15, 1910.

The Produce Bank, Chicago, Ill.:

GENTLEMEN: Will you please send me the name of a reliable firm of commission merchants, handling fruits, vegetables, etc., in Chicago, and greatly oblige.

Stamp enclosed for reply. Yours truly,

RICHARD ROE.

Inquiry Concerning Price of Potatoes.

CRAWFORDSVILLE, INDIANA, October 1, 1910.

John Doe & Co., Commission Merchants, Chicago, Ill.:

GENTLEMEN: Please quote me your best prices for good potatoes (Early Ohio) and oblige. I have about 150 bushels myself, and can get enough to make a car load. If prices suit, I will make a shipment by the 10th of the month. Awaiting an early reply, I am

Yours truly,

RICHARD ROE.

P. S.—You are recommended to me by the Produce Bank.

Letter Announcing Intent to Ship Potatoes.

CRAWFORDSVILLE, INDIANA, October 14, 1910.

John Doe & Co., Chicago, Ill.:

GENTLEMEN: Your quotation of 65 cents per bushel for potatoes delivered in Chicago received. As you also announce that the market is improving I will ship you a car load by the 10th and will sell on the market at that date. Yours truly,

RICHARD ROE.

Announcing Shipment of Potatoes.

CRAWFORDSVILLE, INDIANA, May 15, 1910.

John Doe & Co., Chicago, Ill.:

GENTLEMEN: I have this day shipped you one car load of good potatoes, via ..... Ry. They will probably arrive in Chicago

tomorrow. Please sell them to best advantage and remit, less freight and your commission. Find bill of lading inclosed.

Hoping that the markets are up, I will await returns from you.

Yours truly,

RICHARD ROE.

Letter of Credit.

TERRE HAUTE, INDIANA, June 15, 1910.

Felix Fournier & Co., New Orleans, La.:

GENTLEMEN: Please extend John Doe, Esq., credit for such farming machinery as he may select, to an amount not exceeding five hundred dollars ($500.00) for six months and I will be responsible to you for the payment, should he fail to discharge the obligation at the date of maturity.

Kindly inform me of the amount of his purchase and the date on which it will fall due. Should he default in payment, please notify me of the fact without delay.

Yours respectfully,

RICHARD ROE.

Application of Farmer to Employment Agency for Help During Harvesting Season.

MONTICELLO, INDIANA, June 1, 1910.

Capital Employment Bureau, Indianapolis, Indiana:

DEAR SIR: I wish to secure four men to help me during the harvesting season. I will have ten days' work beginning about June 20. I will pay $1.75 per day and board, lodging and railroad fare from Indianapolis to Monticello. Please let me know within the coming week what the prospects are for getting them through the State Bureau.

Yours truly,

RICHARD ROE.

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